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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.01.2022
DELIVERED ON : 25.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P.Nos.3380, 19142 & 19093 of 2015
and
M.P.Nos.1, 1, 1, 2 & 2 of 2015

H.Arifkhan	.. Petitioner / A1 in Crl.O.P.No.3380/2015.
P.Padmanabhan	.. Petitioner / A2 in Crl.O.P.No.19142/2015.
K.Chellappa	.. Petitioner / A5 in Crl.O.P.No.19093/2015.

Vs.

Mrs.K.Ramalakshmi	.. Respondent in all Crl.O.Ps.
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Prayer in Crl.O.P.No.3380, 19142 & 19093 of 2015: Criminal Original Petitions have been filed under Section 482 of Cr.P.C., seeking to call for the records related to C.C.No.960 of 2014, on the file of the learned Judicial Magistrate, Tambaram, Kancheepuram District and quash the same in so far as the petitioners herein are concerned.

For Petitioner in all the Crl.O.Ps.	: Mr.M.Mohideen Pitchai
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For Respondent in all the Crl.O.Ps.	: Ms.N.Nasreen Fathima Legal Aid Counsel
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C O M M O N O R D E R

All the three criminal original petitions have been filed seeking to quash the private complaint in C.C.No.960 of 2014 pending on the file of the learned Judicial Magistrate, Tambaram. Since the issues involved in all the criminal original petitions are one and the same, all the Criminal Original Petitions are heard together and disposed of by means of this Common Order.



2. Totally there are five accused in this case and the petitioners herein are arrayed as A1, A2 and A5, for the alleged offences punishable under Sections 419, 420, 466 and 468 of IPC.

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3. The brief facts leading to the filing of these criminal original petitions are as follows:

(i) The respondent/complainant herein claims to be the co-owner of the property along with one Mrs.Sivajothi Ammal measuring an extent of 1.70 acre under various survey numbers at Vengambakkam village, Tambaram. Earlier, the respondent is said to have executed a Power of Attorney deed on 19.02.1992, in favour of one Mr.Subarayan, who is said to be a friend of A2, authorising him to sell an extent of 1.64 cents of land.

(ii) By virtue of the said power of attorney, the said Subarayan sold the property in favour of 13 persons by means of registered sale deeds on 20.02.1992 and 02.03.1992 respectively. The purchasers in turn executed a power of attorney deed in favour of A3 and A4 to sell the property, and on various dates in March, April and May, 1999, A1 has purchased the disputed property from them.

(iii) Subsequent to the alienation of the property by Mr.Subarayan, the respondent cancelled the power of attorney executed in favour of Mr.Subarayan on 16.04.1992 and she filed a suit for permanent injunction against the power agent Mr.Subarayan in O.S.No.1843 of 1992 on the file of the learned District Munsif, Poonamallee and obtained an exparte decree in her favour.

(iv) After purchase of the property by A1, when the respondent attempted to disturb his possession, A1 filed a suit in O.S.No.164 of 2002 on the file of the learned District Munsif, Tambaram for permanent injunction and after a full fledged trial, the suit was decreed in favour of A1. Against the said decree and judgment, the respondent filed an appeal in A.S.No.8 of 2009 on the file of the learned Subordinate Judge, Tambaram and the same was dismissed on 22.11.2010. Against the said judgment and decree dated 22.11.2010, the respondent filed a second appeal in S.A.No.1084 of 2014, before this Court and this Court by Judgment and decree dated 19.11.2014, dismissed the second appeal.

(v) After the dismissal of the second appeal, the present private complaint has been filed by the respondent, alleging that, A2 herein has only instigated the respondent and her husband to execute the power of attorney deed in favour of Mr.Subarayan, wherein, she has executed the power only to an



extent of 1.62 cents of land, however, the power agent Mr.Subarayan sold away the entire property of 1.70 acre. That apart, the sale consideration was also not paid to her. In the above circumstance, respondent canceled the power of attorney deed dated 16.04.1992, and the suit filed by the respondent against the power agent Mr.Subarayan was decreed in her favour. Despite the same, 13 persons purchased the property and they executed a power of attorney deeds in favour of A3 and A4 to sell the property. From A3 and A4, A1 has purchased the entire property. According to the respondent, the accused have thereby cheated the respondent/complainant. Hence a private complaint under Section 200 Cr.P.C. has been filed by the respondent and the learned Judicial Magistrate has taken cognizance and issued summons to the accused.

4. Now to quash the said private complaint, the present criminal original petitions have been filed.

5. Mr.M.Mohideen Pitchai, learned counsel appearing for the petitioners would submit that, A1 is a subsequent bona fide purchaser and admittedly, while the power of attorney was alive, Mr.Subarayan sold the property in favour of 13 persons, and only after alienation of the property, the power of attorney was cancelled. Thereafter, all the purchasers executed power of attorney deeds in favour of A3 and A4 and from them A1 purchased the property and he is not aware of all the earlier transactions. Further the earlier suit filed by the respondent was only against Mr.Subarayan and by the time, the entire extent of the property was sold to third parties. Further the respondent has not obtained any decree as against the purchasers.

6. That apart, the suit filed by A1 was decreed in his favour, which was also confirmed by this Court in the Second Appeal, wherein a clear finding was given that the respondent has no title over the property. So far as A2 is concerned, he only attested the document and absolutely there is no allegation against A5. Hence, only to harass the petitioners herein the present complaint has been filed and there is no prima facie case made out against the petitioners herein for taking cognisance.

7. Even though notice has been served on the respondent and her name printed in the cause list, there is no representation for the respondent despite several adjournments. In the above circumstance, this Court appointed Ms.N.Nasreen Fathima as Legal Aid Counsel to represent the respondent.

8. Ms.N.Nasreen Fathima, learned legal aid counsel appearing for the respondent vehemently contended that, the power agent Mr.Subarayan has cheated the respondent. The



respondent executed the power of attorney deed with a bona fide intention that he will sell the property and the sale consideration will be paid to her. However, Mr.Subarayan cheated the respondent and without her knowledge, he sold the entire extent of 1.70 acre and he has not paid the sale consideration to her. In the above circumstance, she has cancelled the power of attorney deed and also filed a suit against Mr.Subarayan and obtained an ex parte decree, only after that, these accused have illegally entered into the sale transactions with the earlier purchasers with an intention to cheat the respondent and thereby committed the offence. The suit filed by A1 is only for permanent injunction and there is no decree for declaration. The learned Judicial Magistrate after considering all the materials available on record took cognizance and issued summons and there is no illegality in it.

9. I have considered the rival submissions and also perused the records carefully.

10. The admitted facts in this case is that, the respondent is the owner of the property measuring an extent of 1.70 acre and she has executed a power of attorney deed in favour of one Mr.Subarayan, when the power of attorney was alive, Mr.Subarayan sold the entire property in favour of 13 persons on 20.02.1992 and 02.03.1992 respectively, only thereafter the power deed came to be cancelled on 16.04.1992. On the date of cancellation of the power deed, the entire property was sold and title transferred to the respective purchasers. Thereafter the respondent has filed a suit for injunction against the power agent alone and obtained an ex parte decree and the purchasers of the property were not made as parties to the suit. Subsequently, all the purchasers of the property executed power of attorney deeds in favour of A3 and A4 in the year 1999, and thereafter A1, is stated to have purchased the property on various dates.

11. That apart, after the purchase, A1 filed a suit against the respondent herein for a permanent injunction in O.S.No.164 of 2002, on the file of the learned District Munsif, Tambaram, and after a full fledged trial, the suit was decreed in his favour and the first appeal in A.S.No.8 of 2009 filed by the respondent was dismissed by the learned Subordinate Judge, Tambaram and the second appeal in S.A.No.1084 of 2014 filed by the respondent before this Court was also dismissed on 19.11.2014. In the second appeal, this Court has held that the power agent Mr.Subarayan sold the property when the power deed was alive and no steps have been taken by the respondent to cancel those sale deeds and therefore the respondent cannot have any right over the suit property. That apart, this Court has also further held that the earlier suit filed by the respondent



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against the power agent Mr.Subarayan, is only binding him and not against the subsequent purchasers. The relevant portion of the said judgment reads as follows:

"7. At the outset, I have to state, unfortunately, the claim of the appellant/defendant cannot be accepted at all for the simple reason the Power of Attorney executed by the defendant in favour of one S.Subbarayan is not denied. The Power of Attorney is dated 19.02.1992 and the Power of Attorney in turn sold the suit property in respect of eleven vendors on 20.02.1992 and one vendor on 02.03.1992 and the entire extent of 1.70 acres have been sold after plotting out excluding the road area. Subsequently, the defendant has filed the suit in O.S.No.1743 of 1992, for permanent injunction restraining S.Subbarayan from dealing with or encumbering the suit property and the suit was decreed ex parte. By the time the defendant filed the suit, the entire sale has taken place. In the suit for bare injunction, the defendant should have impleaded all purchasers as party or should have given notice to them, but, nothing was done and conveniently, the Power of Attorney also remained ex parte in the suit. The prayer in the suit in O.S.No.1743 of 1992 is only to the extent that the Power of Attorney S.Subbarayan should be restrained from dealing with or encumbering the suit property. When the property has already been sold, when taken no steps to cancel those sale deeds are taken, the defendant cannot have any right over the suit property. Therefore, this Court finds that there is no question of law much less any substantial question of law involved in the Second Appeal. Hence, I do not find any reason to interfere with the reasoned judgment and decree of the lower Appellate Court dated 22.11.2010. The Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs."

12. After the dismissal of the second appeal, the present private complaint has been filed and the learned Judicial Magistrate without considering any materials has mechanically taken cognizance and issued summons to the petitioners.



13. As rightly contended by the learned counsel appearing for the petitioners, A1, is only a subsequent purchaser from the original purchasers after seven years from the original sale, for a valuable consideration. That apart, the suit filed by A1 was also decreed in his favour and there is a clear finding that the respondent/complainant does not have any right over the property. That apart, the power agent Mr.Subarayan who is stated to have cheated the respondent/complainant was not made an accused in the complaint. A1 is a bona fide purchaser and he has also obtained a decree from a Civil Court in his favour and therefore it cannot be held that he has cheated the respondent and the offences under Sections 419, 420, 466 and 468 of IPC are not attracted against him.

14. So far as A2 is concerned, he is stated to be an attester of the sale deed and so far as A5 is concerned, absolutely there is no allegation against him in the complaint as well as in the sworn statement.

15. Considering the above circumstances, this Court is of the view that no prima facie case is made out against the petitioners herein and the complaint has been filed in total abuse of process of law and the learned Judicial Magistrate without considering any of the materials mechanically taken cognizance and issued summons to them. Hence, the proceedings against the petitioners / (A1), (A2) and (A5) in C.C.No.960 of 2014 pending on the file of the learned Judicial Magistrate, Tambaram is liable to be quashed as against the petitioners herein and accordingly quashed as against the petitioners herein.

16. In the result, all the above criminal original petitions are allowed. Consequently, the connected miscellaneous petitions are closed. The legal aid counsel has rendered valuable service to this Court and the Tamil Nadu State Legal Service Authority is directed to pay the necessary fees to the learned Legal Aid Counsel appeared for the respondent.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar



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To

The Judicial Magistrate,
Tambaram.

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Copy to

The Secretary,
Tamil Nadu State Legal Service Authority,
High Court, Madras.

+3ccs to Mr.M.Mohideen Pitchai, Advocate, S.R.No.4686,4687,4688

+3ccs to Ms.N.Nasreen Fathima, Advocate, S.R.No.4787,4788,4789

Crl.O.P.Nos.3380, 19142 & 19093 of 2015
and
M.P.Nos.1, 1, 1, 2 & 2 of 2015

MG[co]
NSK 14/02/2022