

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.OP.NOS.17254 AND 18553 OF 2020

AND

CRL.MP.NOS.6665 AND 7286 OF 2020

S.Ramajayam

... Petitioner in  
Crl.OP.No.17254 of 2020

1. P.Kandhsamy

2. P.Abraham Paul

... Petitioners in  
Crl.OP.No.18553 of 2020

.Vs.

1. The State Rep. by  
The Inspector of Police,  
District Crime Branch,  
Coimbatore.

2. N.N.Kaliammal

... Respondents in  
both Crl.O.P's.

PRAYER IN CRL.OP.NO.17254 OF 2020:-

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to First Information Report vide Crime No.1 of 2020 dated 07.01.2020 on the file of the District Crime Branch, Coimbatore and quash the same as illegal in so far as the petitioner is concerned.

PRAYER IN CRL.OP.NO.18553 OF 2020:-

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to Crime No.1 of 2020 on the file of the District Crime Branch, Coimbatore and quash the same by allowing this Criminal Original Petition.

CRL.O.P.NO.17254 OF 2020

For Petitioner : Mr.R.Krishna Prasad  
For M/s.Sarvabhauman Associates

For Respondents : Mr.A.Gopinath  
Government Advocate  
(Criminal Side)  
For R1

Mr.R.Suresh Kumar  
For K.M.Vijayan Associates  
For R2

CRL.O.P.NO.18553 OF 2020

For Petitioner : Ms.R.Sashee  
For Mr.Jana Govartana Maheswaran

For Respondents : Mr.A.Gopinath  
Government Advocate  
(Criminal Side)  
For R1

Mr.R.Suresh Kumar  
For M/s.K.M.Vijayan Associates  
For R2

#### C O M M O N O R D E R

These Criminal Original Petitions have been filed, invoking Section 482 Cr.P.C seeking orders to call for the records pertaining to First Information Report vide Cr.No.1 of 2020 on the file of the District Crime Branch, Coimbatore and to quash the same.

2. The petitioners have been arrayed as A1, A2 and A3 in Cr.No.1 of 2020 on the file of the first respondent police for the offences punishable under Sections 420, 464, 423, 466, 471 and 120 B of IPC based on the complaint given by the second respondent.

3. The case of the prosecution is that the second respondent herein along with her children are the owners of land measuring 6.92½ acres comprised in S.Nos.233/1A, 232/A1, 232/1A2 and 233/2 of Vellaikinaru Taluk, Coimbatore North Taluk. It is further alleged that the property was attained by her husband late Nanjukutty @ Nanjukutty Gounder through a partition deed in

Document.No.1539 of 1988 and her husband was the sole owner of the said property. After the demise of her husband, the second respondent is alleged to be in absolute possession and ownership of the above said property. She further alleged that her adjacent property in S.Nos.232/1A7, 232/1B2, 231/1B1, 231/1F1 was owned by one Sarathamani and family. The said Sarathamani and her family has given power of attorney to the first petitioner/2<sup>nd</sup> accused in Crl.OP.No.18553 of 2020 by general power of attorney deed in Vide Doc.No.6090 of 2015, another power of attorney to one Balakrishnan by general power of attorney deed vide Doc.No.6091 of 2015 and another power of attorney to the first petitioner/2<sup>nd</sup> accused in Crl.OP.No.18553 of 2020 by general power of attorney deed vide Doc.No.6092 of 2015. Based on the power of attorney deed in Doc.No.6090 of 2015, the first petitioner executed a sale deed in Doc.No.2262 of 2016 in favour of S. Ramajeyam (petitioner in Crl.OP.No.17254 of 2020) for the property in S.NO.232/1B1 to an extent of 18½ cents. Based on the power of attorney deed vide Doc.No.6091 of 2015, Balakrishnan executed a sale deed in Doc.No.8053 of 2015 in favour of Ramajeyam (petitioner in Crl.OP.No.17254 of 2020) for the property in S.No.232/1B2 to an extent 1 acre and another property in S.No.232/1A7 to an extent of 2½ cents. Based on the said power of attorney deed in Doc.No.6092 of 2015, the first petitioner (in Crl.OP.No.18553) executed a sale deed vide Doc.No.3835 of 2019 in favour of Ramajeyam (petitioner in Crl.OP.No.17254 of 2020) for the property in S.No.231/1F1, which is of total 64¼ cents in which 30 cents were sold to the first accused Ramajeyam/1<sup>st</sup> accused (petitioner in Crl.OP.No.17254 of 2020). The second respondent further states that the property owned by her in S.Nos.233/1A, 232/1A1, 232/1A2 and 233/2 was included in the schedule of the above said sale deed in Doc.No.3835 of 2019 and has been described as a pathway which routes to Vellaikinaru Street, thus, creating an encumbrance in the property of the second respondent. She has further alleged that the power of attorney ie., first petitioner/A2 (in Crl.OP.No.18553 of 2020), the purchaser Ramajeyam/A1 (in Crl.OP.No.17254 of 2020) and second petitioner/Document Writer/A3 in (Crl.OP.18553 of 2020) have criminally conspired together and have attained unlawful gain over her property. This is the sum and substance of the allegation made by the second respondent in her complaint before the respondent police, based on which, the case was registered.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the first respondent police.

5. It is seen from the available records that the second respondent alleged that the property comprised in S.Nos.233/1A, 232/1A1, 232/1A2 and 233/2 was obtained by her husband through

partition deed vide registered Doc.No.1539 of 1988. Under the partition deed, it is mentioned that the pathway can be enjoyed by him and no where it is stated that he is absolute owner of the said property. A perusal of the revenue records revealed that there is a Nilaviyal Vandhi Pathai (cart track) measuring to an extent 42.6 meter in S.No.233/2. The said Nilaviyal Vandhi Pathai (cart track) commences at 232/1A via S.No.233/2 and ends at 232/1A2. Likewise, the total extent of 0.26 cents via S.No.232/1A2 out of which, 0.23 cents was enjoyed by him and his father. In turn, he sold out the property to Kaaliyammal and Ramakkal. After the demise of the erstwhile owners, the said property was inherited by their legal heirs. The said legal heirs have executed the power deed in common in favour of the first petitioner herein/ second accused (in Crl.OP.No. and the same was registered vide Doc.No.6090/15 and 6092/15. On the strength of the power of attorney, the first petitioner executed a sale deed vide Doc.No.2262/16 wherein the well, pathway etc have been specifically mentioned. Subsequently, it was subdivided in S.Nos.232/1A2 and the pathway in S.No.232/1A1 in favour of Ramajeyam/A1 in Other Crl.OP.No.17254 of 2020. Ramajeyam/A1 has also obtained the property comprised in S.Nos.232/1A7, 232/1B2, 232/1B1 and 231/1F1 and the cart track in 232/1 and 233/1 and the Nilaviyal Vandhi Pathai in S.No.233/1A and 233/2 was also transferred in favour of Ramajeyam/A1 and he owns a common share of the above said well and path ways with the other patta holders including the family of the second respondent/defacto complainant. Further, the respondent's husband has interfered in the peaceful possession of the first accused and as such he was constrained to file a suit in O.S.No.952 of 2019 on the file of the III Additional District Munsif, Coimbatore for permanent injunction and it is pending. Therefore, no offence is made out as against the petitioners since he mentioned in the schedule of property as common pathway and they never claimed exclusive right over the common pathway. The second respondent/second respondent's husband interfered in the peaceful possession and enjoyment of the common pathway and well comprised in S.Nos.233/1A and 233/1 and situated in S.No.232/1, 233/1. That apart, on the strength of sale deed, the first accused issued patta along with other joint patta holders. Infact, the defacto complainant/the second respondent initiated proceedings before the District Registrar to amend the sale deed executed in favour of the first accused in the proceedings dated 06.03.2020 in Na.Ka.No.9221/AA1/2018. The District Registrar has dismissed the petition and directed to approach the concerned court for proper relief. Further, the District Registrar concluded that there is no fabrication of documents and signatures of no one was forged and therefore based on the power of attorney, the sale deed was duly executed in favour of the first accused. Further, after filing the suit for permanent injunction by the first accused in OS.No.952 of

2019 on the file of the III Additional District Munsif Court, the present impugned FIR has been lodged by the second respondent. Therefore, it is clear that the second respondent is trying to claim cloak of criminal offence in civil dispute.

6. On perusal of the entire FIR, this Court found that the entire issues are civil in nature and the criminal proceedings amount to abuse of process of law. The present FIR is nothing, but a clear abuse of process of law.

7. Considering the facts and circumstances of the case, the proceedings in F.I.R. in Crime No.1 of 2020, dated 07.01.2020 on the file of the first respondent police for the offences under Sections 420, 464, 423, 466, 471 and 120 B of IPC is quashed and accordingly, these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Vv

To

1. The Inspector of Police,  
District Crime Branch,  
Coimbatore.
2. The Public Prosecutor,  
High Court, Madras.

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.40003  
+1cc to M/s.K.M.Vijayan Associates, Advocate, S.R.No.40043

CRL.O.P.NOS.17254 AND 18559 OF 2020  
AND  
CRL.M.P.NOS.6665,7286 OF 2020

AJB(CO)  
PBS/20/07/2022