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CRL.O.P.NO.23982 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

CRL.O.P.NO.23982 OF 2021
AND CRL.M.P.NOS.13244 AND 13245 OF 2021

G.Mathanaseelan

... Petitioner

VS.

1.S.Muthusamy

2.M.Savithiri

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, with a prayer to set aside the order passed under Section 340 Cr.P.C. by the learned II Additional Sub-Judge, Coimbatore, dated 30.11.2021 in Crl.M.P.No.861 of 2021 in O.S.No.789 of 2011 as against the petitioner

For Petitioner : Mr.AR.L. Sundaresan
Senior Counsel
for Mr.R.Raghu Raj

For Respondents : Mr.K.Myilsamy



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ORDER

This Criminal Original Petition has been preferred seeking to set aside the order dated 30.11.2021 passed in Crl.M.P.No.861 of 2021 in O.S.No.789 of 2011 by the learned II Additional Sub-Judge, Coimbatore.

2. The petitioner is the seventh respondent in Crl.M.P.No.861 of 2021 in O.S.No.780 of 2011, wherein an order has been passed by the learned II Additional Sub Judge, Coimbatore, on 30.11.2021, under Section 340 Cr.P.C., for taking action against the petitioner and five others for the offences under Sections 193, 199 and 200 read with 209 IPC for producing false evidence before the Court.

3. The complaint in the above petition was filed by the respondents herein. The allegations made in the complaint reads as under:

(i) An extent of 4 Acres 16 ½ Cents on the northern half of a total extent of 8 Acres 33 Cents in S.Nos.294 and 295 of Vellanaipatti Village, Coimbatore District was belonged to the first respondent's



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paternal grandfather Komarasamy Gounder through a registered Sale Deed No.2692/1935. The said Komarasamy Gounder had executed a Settlement Deed in favour of the wife of his brother by name Ammasai Akkal in the year 1940. Ammasai Akkal had pre-deceased Komarasamy Gounder and hence the said property was inherited by the only son of Komarasamy Gounder by name Sennimalai Gounder and he was in enjoyment of the same till 1983. Subsequent to the death of Sennimalai Gounder, his wife and children inherited the same as his legal heirs. In the year 1984, the legal heirs of Sennimalai Gounder had executed a Release Deed in respect of their share in favour of the first respondent Muthusamy. From then onwards, the respondents are in joint possession and enjoyment of the said property and the revenue records have been mutated in their name.

(ii) In the meanwhile, one K.Saravanamoorthy had appointed one K.C.Somasundaram as his Power Agent and filed a Suit through the said Power Agent before the I Additional District Munsif, Coimbatore, in O.S.No.1041 of 2020. A notice was sent to the respondents on 10.11.2020 and in the said legal notice, it is stated that the properties belonging to the respondents were the subject matter of the Suit in O.S.No.789 of 2011 and



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by virtue of the final decree passed therein, the said properties were allotted to K.Saravanamoorthy. On seeing the said notice, the respondents obtained certified copy of the case records and came to know that (i) Palaniammal @ Palanathal (ii) K.Anandavadivel (iii) Kalamani @ Mahalakshmi (iv) Baby and (v) K.Saravanamoorthy were the parties to the said proceedings and they had engaged the petitioner G.Mathanaseelan and one S.Rajeshkumar as their respective counsels.

(iii) In the said suit, on the side of the plaintiffs, one registered document in Document No.663/1919 executed by one Ramana Gounder was filed by stating that it is a Sale Deed. But in reality, the said document is only a Mortgage Deed. The plaintiffs, defendants and their respective counsels conspired together with ulterior motive and filed a Compromise Petition in I.A.No.792/2012 in O.S.No.789 of 2011 obtained a compromise decree. The persons who did not have any title or enjoyment over the property had managed to file a Suit by misrepresenting the mortgage deed as a sale deed and abused the process of the court. The petitioner and another Advocate by name S.Rajeshkumar had also actively involved in the above said illegal plan conceived by the parties to the Suit



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and hence, a complaint has been filed by the respondents for initiating action against the petitioner and others for producing false evidence before the Court and in which the impugned order has been filed. Aggrieved over that, the petitioner who is the seventh respondent and the counsel for the plaintiffs in O.S.No.789/2011 has filed this Criminal Original Petition for setting aside the proceedings issued under sec.340 Cr.P.C as against him.

4. Heard the submissions made on either side and perused the materials available on record.

5. Mr.AR.L.Sunderesan, learned Senior Counsel for the petitioner submitted that the petitioner, being the counsel to a party to the proceedings in O.S.No.789 of 2011 cannot be held liable for producing the mortgage deed as sale deed; the petitioner could have been negligent in filing the documents along with the plaint without proper scrutiny and for that no proceedings can be taken against the petitioner under sec.340 Cr.P.C. It is further submitted that the plaintiffs are the persons who signed the verification through declaration and not their counsels and hence, no action can be taken against the petitioner. The petitioner as an



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Advocate had just assisted his clients for drafting the plaint and he did not declare about the correctness of the statements made therein. The alleged document was only a Mortgage Deed. Though a Suit has been filed on that basis, there is no evidence to show that the said Mortgage Deed was concocted and created as a Sale Deed. Hence the impugned order as against the petitioner should be set aside.

6. The learned counsel for the respondents submitted that the petitioner, being the counsel for the plaintiffs, could have been aware of what is produced by him. Knowingly he had drafted the plaint by alleging a mortgage as a Sale Deed; so the petitioner had also actively conspired with the other persons and helped them to get a decree by way of playing fraud and hence, the learned II Additional Sub Judge, Coimbatore, had rightly initiated the proceedings under Section 340 Cr.P.C. against the petitioner as well.

7. It is a peculiar case where the plaintiffs have managed to utilize a Mortgage Deed as a Sale Deed and obtained a decree in a Suit for partition. Even though the Mortgage Deed was not concocted as a Sale Deed, the Court which passed the decree had misdirected itself with the plaint averments and proceeded to pass the decree, by believing the



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document produced before the court is a sale deed. That is especially because the defendant did not contest the Suit and the parties colluded together to get a compromise decree.

8. The Advocates assist their clients in drafting the plaint by putting the facts instructed to them in a meaningful manner by using their skill of sequencing. The parties affix their signatures by giving declaratory statements and verification to the effect that the facts stated in the plaint are true to the best of their knowledge and belief. The Advocates does not sign the declaration or verification.

9. An Advocate knows the difference between the Mortgage Deed and Sale Deed better than his client. Even if a party indicates the mortgage deed as a sale deed, the counsel could have done due scrutiny and advised his client not to mention the Mortgage Deed as the Sale Deed. The failure on the part of the petitioner to do so could be wanton or due to negligence. If the aggrieved claims that the act of the advocate in allowing the mortgage deed to be produced before the court as a sale deed, is not



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due to negligence but due to active connivance, it should be backed up with materials to show similar professional misconduct or other such bad antecedents on the part of the counsel. The materials produced can also show that the counsel had enjoyed undue advantage or enrichment. Only if the materials are produced, the advocate can also be nailed with the criminal proceedings.

10. As an officer of the court, the advocate is expected to assist the court by presenting the case in a fair and proper manner, by avoiding mis-representation. If the counsel makes conscious mis-representation, he is bound to face the consequences. But if the mis-representation is due to sheer negligence, the counsel can not be penalised. In the instant case, the petitioner who is the counsel for the plaintiffs has submitted that the misrepresentation was due to negligence and not wanton. As it is pointed out earlier, the respondents did not bring any other materials before the court to show that the counsel was in the habit of abusing the process of the court. Neither it has been stated that he had also enjoyed undue advantage or enrichment due to the above



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misrepresentation.

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11. In the absence of any such materials it can not be presumed that the petitioner, who is a counsel to the plaintiffs had also conspired with the plaintiffs to get a fraudulent decree by misrepresentation or by producing false evidence.

12. When a plaint is presented before the Court, it will be scrutinised by the registry. The staff of the Registry will scrutinise the plaint and the documents filed along with the plaint and make due endorsement on the plaint for taking it on file by the Judicial Officer of the Court. Had the filing Clerk noticed that a Mortgage Deed is produced in the name of a Sale Deed, he/she ought to have returned the plaint by making due endorsement and got it signed by the Judicial Officer. The document went out of the attention of the staff of the Registry also. Later when it was marked as a document, the bench assistant and the judicial officer could have noticed that the document is a mortgage deed. At that point also it was omitted to be noticed and the document was allowed to



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reach its destination.

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13. Though the respondents implicated the counsels also as accused, they did not have any grievance against the staff of the Registry or the Officer. It is obviously because the respondents believed that the staff of the Registry and the officer could have been negligent and they could not have any criminal intention. Similar understanding should be extended to the counsels also, especially when there is no material to show that the counsel had the habit of abusing the process of the court or that he enjoyed undue advantage or enrichment.

14. As stated already, the declaration and verification about the facts stated in the plaint are signed by the parties and not by counsels. The parties who depose evidence by coming to the witness box and present the documents to be transformed into evidence. So it is right on the part of the respondents to initiate proceedings under Section 340 Cr.P.C. against the parties to the Suit for having played fraud on the Court for obtaining a fraudulent decree. The Advocates do not give evidence by



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swearing before the Court.

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15. However, it is a classic case which gives a clarion call to the counsels, Registry members and the judicial officers to have their eyes wide open while receiving the materials filed along with case papers and scrutinise the same with due attention. Or else, they might need to face a bad day.

16. In view of the above stated reasons and especially due to the fact that the parties to the suit alone had given declaration and verification in the plaint and the swearing before the court, I feel the proceedings initiated against the petitioner, who is the seventh respondent is liable to be quashed.

In the result, this Criminal Original Petition is allowed and the order dated 30.11.2021 passed in CrI.M.P.No.861 of 2021 in O.S.No.789 of 2011 by the learned II Additional Sub Judge, Coimbatore, is quashed as against the petitioner herein. The benefit of this order shall be extended to



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the 8th respondent in Crl.M.P.No.861 of 2021 who is also a counsel and similarly placed. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Internet : Yes/No
TK

To

The II Additional Sub-Judge
Coimbatore.



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R.N.MANJULA, J.

TK

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