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**Crl.O.P.(MD)No. 4390 of 2019**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23/06/2022

CORAM:

**THE HON'BLE MR JUSTICE G.ILANGO VAN**

Crl.O.P. (MD)No.4390 of 2019

and

Crl.MP(MD)No.2661 of 2019

1.Mathi Shankar  
2.M.Mani Shankar  
3.M.Mathava Shankar : Petitioners/A4 to A6

Vs.

1.The State rep. By  
The Inspector of Police,  
City Crime Branch,  
Tirunelveli City,  
(Crime No.02 fl 2016) : 1<sup>st</sup> Respondent/Complainant

2.Paul M.Morison : R2/De-facto Complainant

**Prayer:** Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the case in FIR No.02 of 2016 on the file of the 1<sup>st</sup> respondent/Inspector of Police, City Crime Branch Police Station, Tirunelveli City and quash the same as against the petitioners.

For Petitioners : Mr.A.Ayiram K.Selvakumar  
for Mr.V.M.Jegadeesh Pandian

For 1<sup>st</sup> Respondent : Mr.SS.Madhavan  
Government Advocate  
(Criminal side)

For 2<sup>nd</sup> Respondent : Mr.T.Selvan



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**O R D E R**

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This criminal original petition is filed seeking quashment of the case in FIR No.02 of 2016 on the file of the 1<sup>st</sup> respondent/Inspector of Police, City Crime Branch Police Station, Tirunelveli City.

**2.The facts in brief:-**

The 2<sup>nd</sup> respondent is the de-facto complainant, lodged a complaint against the accused persons with the following allegations. He purchased a property in RS No.540/2C measuring about 10 cents from one Devadasan, S/o.Kulandaisamy Pillai, for a sum of Rs.2,500/-, in 1982 and that property was given to the above said K.Devadasan on 31/10/1964 through a settlement deed. After purchase, he put up a hand pump and also constructed a compound wall.

3.Later, it was found that on the basis of the alleged power of attorney given by one S.Kumarasamy, S/o.Sivanu Thevar in favour of K.Devanasan, the property was sold to one Chellammal, in 1993. It is a created document. Based upon which, he encroached the property and patta was also transferred in the name of Mathi Sankar. With these



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allegations, he filed the complaint. Upon which, the present case has been registered in Crime No.2 of 2016 for the offences under sections 120-B, 419, 465, 467, 468, 471 and 420 IPC.

4. Seeking quashment of the investigation, the petitioners, who are arrayed A4 to A6 have filed this petition mainly on the ground that it is a clear case of title dispute, which has been given a criminal colour and these petitioners are only subsequent purchasers and they were not in the picture, at the time of the execution of the power deed. A suit in O.S No.535 of 2015 was filed by the wife of the first petitioner herein namely Chandrika, for permanent injunction and that was also decreed in her favour, wherein it is a clear finding to the effect that the property, which is claimed by the petitioners did not belong to their vendor.

5. Heard both sides.

6. For better understanding of the issue, let us straightaway go the finding of the civil court. As mentioned in the preamble portion, the wife of the first petitioner namely Chandrika filed a suit in O.S No.535 of



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2015 on the file of the District Munsif, Tirunelveli against the de-facto complainant seeking permanent injunction. In respect of the property situated in RS No. 540/2C measuring about 10 cents, which is the subject matter of the dispute between the parties. According to Chandrika, the property under dispute, originally belongs to Devadasan in patta No.419. He executed a power of attorney in favour of one Kumarasamy, on 19/09/1991. The above said Kumarasamy, sold the property to one Chellammal on 10/06/1993 and she sold the property to one S.Mathisankar. The patta was also transferred in the name of S.Mathisankar. He put up a compound wall around the property. Later he mortgaged the property to Dayalan, on 09/06/1994. Later, it was redeemed. On 07/05/2015, he settled the property in favour of his two sons Maani Sankar and Madhav Sankar. Later, they settled the property in favour of the above said Chandrika, on 05/10/2015.

7.Per contra, it is contended on the part of the de-facto complainant to the effect that the property under dispute, originally belonged to his vendor namely Sivanu Thevar. As mentioned above, he also traced the history of the property in the written statement. According to him, the total extent, which was available in the undivided



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survey No.546/C was 2 acres 19 cents. It only belongs to Abdul Kadhar Sahib and his son Gulam Mohideen @ Chinna Kanna and as per the partition deed, dated 17/07/1946, they sold the property to one Innasimuthu Pillai, on 23/03/1963. He settled the property to his vendor K.Devadasan, on 31/10/1964. Later, that property was purchased by him, on 30/06/1982.

8.So reading of the pleadings of the parties before the trial court shows that both the parties claim and trace the title through their predecessor in title. After going through the entire records and evidence, the trial court found that there is a correction in the sale deed of the de-facto complainant with regard to the survey number. According to the trial court, the property, which was purchased by the 2<sup>nd</sup> respondent was not the disputed property.

9.A Commissioner was also appointed by the trial court to identify of the property and fix the boundaries. The original document of the second respondent was compared with that of the certified copy of the sale deed and found that the survey number was corrected in the original sale deed of the de-facto complainant. With regard to the



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possession also, the trial court found that the wife of the first petitioner was in possession. Against which, AS No. 113 of 2018 was preferred by the de-facto complainant, which was allowed on the ground that there was no document to show that the entire extent in Survey No.540/1 was owned by the predecessor in title of Chandrika. Whereas the entire properties belong to the predecessor in title of the 2<sup>nd</sup> respondent. This aspect of title issue was gone into by the first appellate court incidentally. Because in a suit for permanent injunction, a preliminary consideration is possession and title will come into play only as a secondary or incidental issue. So on the basis of the possession also, the theory of possession follows title was invoked.

10.It is further found that on the basis of the document, that has been produced by the second respondent, cloud was created over the title of Chandrika. So on that ground, the appeal was allowed. Against which, now it is stated that second appeal has been preferred before this court. So the correctness of the finding of the appellate court is going to be decided by this court.



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11.Now suffice to say that it is a clear case of title dispute between the parties. Whose title prevails the other, is a matter for consideration, either by the second appellate court or through properly instituted a title suit.

11.With these background, the question, which arises for consideration is whether any criminality can be attached to the petitioners.

12.The petitioners, as mentioned earlier, become the title-holders of the property only subsequently. Whether the original Principal namely Kumarasamy was the real owner, as mentioned earlier, is a matter for consideration by the civil court. When the title is under dispute, at no stretch of imagination, this court can construe that the documents are forged in nature. There is no question of impersonation involved. So the continuation of criminal proceedings will amount to abuse of process of court. The parties must settle the dispute in the pending civil litigation.



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13.In the result, this criminal original petition is **allowed**. The impugned FIR in Crime No.2 of 2019 stands quashed, not only against the petitioners, but also against all the accused persons, who were arrayed in the impugned FIR. Consequently, connected Miscellaneous Petition is closed.

**23.06.2022**

Internet:Yes/No  
Index:Yes/No  
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**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



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To,

- 1.The Inspector of Police,  
City Crime Branch,  
Tirunelveli City,
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**G . ILANGO VAN , J . ,**

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