



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12/01/2022

Delivered on : 21/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

WEB COPY

Crl.O.P.(MD)No.10938 of 2020

and

Crl.MP(MD)Nos.598 of 2021 and 4989 of 2020

Kirubakaran : Petitioner/Sole Accused

Vs.

1.The Inspector of Police,
Othakadai Police Station,
Madurai District. : R1/Complainant

2.Rajeswari : R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to CC No.89 of 2020 on the file of the Judicial Magistrate, Melur and quash the same.

For Petitioner : Mr.C.Muthusaravanan

For 1st Respondent : Mr.RMS.Sethuraman
Additional Public Prosecutor

For 2nd Respondent : Mr.G.Karuppasamy Pandian

O R D E R

This petition has been filed seeking quashment of the case in CC No.89 of 2020 on the file of the Judicial Magistrate, Melur.

2.The case of the prosecution in brief:-

The husband of the de-facto complainant and the father of the accused are brothers. Their father died in the year 2003. The de-facto complainant's husband died in the year 2013. The land compromised in survey Nos.6/3 and 10/4 of an extent of 78 cents have been in possession and enjoyment of the husband of the de-facto complainant. The Government has issued a settlement patta for the above said property. In the meantime, the accused has forged the document, as if there is a joint patta by inserting his father's name along with the name of the complainant's husband. Taking advantage of the illiteracy, the accused has obtained thumb

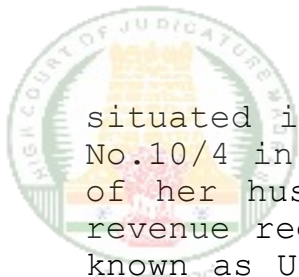


impression of the complainant's husband and created a partition deed and got registered the same. Subsequently, the accused created a joint patta and subsequent transaction and created encumbrance over the properties of the complainant's husband. To divert the case, the accused has filed a civil suit in O.S No.283 of 2019, by arraying the complainant, as the first defendant, seeking partition. Based on the complaint given by the de-facto complainant, a case in Crime No.460 of 2016 was registered by the first respondent police for the offences under sections 468 and 471 IPC. After completing the investigation formalities, final report has been filed in CC No.89 of 2020 on the file of the Judicial Magistrate, Melur.

3. Seeking quashment of the above said final report, this petition has been filed mainly on the ground that mere reading of the statement of the witnesses and perusal of the documents, relied upon by the prosecution, no case has been made out as against the petitioner for the offences under sections 417 and 420 IPC. Even though, the entire allegation against the petitioner is that he has forged the records, it belongs to the Revenue Department and he cannot forge the signature of the officer or the seal of any of the office, which issued the patta and other documents. Originally, the father's name of the petitioner was omitted in the Revenue Records with regard to the property in survey Nos.6/3 and 10/4. So, on 02/05/1987, the father of the petitioner applied patta to the concerned authority. Based on the notice, a joint patta in the name of the father of the petitioner and the husband of the 2nd respondent was issued, on 13/06/1987. Subsequently, the changes were carried out in the 'A' Register also and thus, the revenue records were mutated and a separate patta was issued in favour of the petitioner. Further, during the life time of the husband of the 2nd respondent, a partition deed was effected, on 15/12/2008 and the same was registered in the Sub Registrar Office, Tamaraipatti. The husband of the 2nd respondent has not challenged the partition deed for the last five years. The petitioner and the 2nd respondent have mutated the revenue record as per the partition deed and they are in enjoyment. With regard to the property comprised in survey Nos.30/1 and 30/9, it was owned jointly in the name of the husband of the 2nd respondent and the father of the petitioner. The petitioner and her sister are the legal heirs of their deceased father and both have got their equal right in the above said properties, since the property is inherited from their father. The petitioner has filed O.S No.283 of 2019 on the file of the VI Additional District Judge, Madurai and the same is pending adjudication. Hence, there is no question of grabbing the land or forgery as alleged in the charge sheet.

4. Heard both sides.

5. At the outset, we will go to the document in respect of the alleged forgery that have been allegedly committed by the petitioner and others. For that purpose, we will go to the petition, that was filed by the de-facto complainant before the District Revenue Officer, Melur. she has stated that before UDR survey, the property

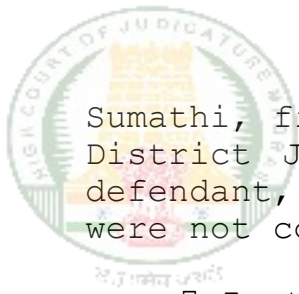


situated in Survey No.6/3 meaning 36 cents and 42 cents in survey No.10/4 in Potasapatti, Madurai East taluk, was standing in the name of her husband in patta No.27. During the course of updating the revenue register of the revenue records scheme which was popularly known as UDR Scheme, the name of the Dhanakodi has been included as joint pattadhars in respect of Patta No.32. Later, the property in survey Nos.6/3 and 10/4 has been transferred to Kirubakaran, the petitioner herein. So with this, she made a request to restore the patta, which was standing in her husband name in the UDR Scheme. Based upon the above said petition, enquiry was undertaken and notice of enquiry was also issued to the petitioner as well as to the de-facto complainant, by the District Revenue Officer, on 02/08/2021 and enquiry was scheduled on 13/08/2021. The petition given by the 2nd respondent throw much light upon the controversy. It is seen that before updating the register, the patta for the above said property was standing in the name of the husband of the de-facto complainant. But during the UDR scheme, the name of Dhanakodi was included and Dhanakodi, is the father of this petitioner and consequently, it was also transferred in the name of this petitioner. This, according to the de-facto complainant, is a forged one.

6.During the course of argument, it was brought to notice of this court that this petitioner is the maternal uncle of the de-facto complainant. Now in this context, we will go to the case of the petitioner. According to him, before the UDR Scheme, the petitioner's father name was omitted in the patta. He made a petition, on 02/05/1987. Based upon which only, enquiry was undertaken and service notice was given and patta was reissued by including the name of his father, on 13/06/1987. In pursuance of the above said inclusion in the patta, a partition was effected, on 15/12/2008, by which, the property comprised in survey Nos.10/3 and 6/3 was allotted to this petitioner. So this document throws much light upon the history of the property. We find that originally, the properties which are mentioned in the partition deed belongs to one Ayammal. Ayammal had two male children namely Ramaiah and Dhanakodi. The above said Ramaiah is the husband of the de-facto complainant herein and this petitioner is the son of the above said Dhanakodi. Both the Ramaiah and Dhanakodi participated in the partition, by which the properties were divided into two schedules. A schedule was allotted Ramaiah and B schedule was allotted to this petitioner. In the partition deed, in B schedule, the property situated in Survey Nos.10/4 and 6/3 were allotted to the share of this petitioner. In pursuance of the above said partition and after the death of Ramaiah, the property, which was allotted to Ramaiah was transferred in the name of the 2nd respondent and her child, which is evident from patta No.645 and in respect of B schedule property, it was changed in the name of the petitioner in patta No.86. From the sister of this petitioner, he also obtained release deed in respect of this property. Subsequent to that, because of the

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the petitioner by joining hands with his sister namely



Sumathi, filed a suit in O.S No.283 of 2019 before the VI Additional District Judge, Madurai by impleading the 2nd respondent as first defendant, for partition in respect of some other properties, which were not concerned here.

7. In the light of the above said development, now we will go to the statement of the de-facto complainant. According to the de-facto complainant, the property comprised in survey Nos.10/4 and 6/3, totally about 78 cents was allotted to her husband individually in patta No.27 before the UDR scheme. In order to grab the property by misrepresentation, her husband was taken by the above said Dhanakodi to the Sub Registrar office and without his knowledge, by misrepresenting the contents of the document, the above said partition deed has been obtained. When that was enquired, this petitioner appears to have admitted the above said guilt. So the statement of the second respondent clearly shows that even though, she admits the partition deed that was effected between the Ramaiah and the Dhanakodi, she wants to dispute the same on the ground that it is a fraudulent document. But as we see from the document, it is seen that Ramaiah put his thumb impression and the said Ramaiah is the competent person to speak about the alleged misrepresentation etc. But now, he is no more. After a lapse of several years, this dispute has been raised by the 2nd respondent stating that it is a fraudulent document, which was obtained by misrepresentation. So, the plea of *non est factum* can be raised only by a party to the document and no third party or legal heirs of a party. This shows that it is clearly a civil dispute. If at all the 2nd respondent can only agitate the same only through proper civil proceedings.

8. During the course of argument, I made a specific question to the learned counsel appearing for the petitioner, whether any enquiry was undertaken during UDR scheme for including the name of the above said Dhanakodi in the patta. For that purpose, the learned counsel for the petitioner would straightway go to the service notice under section 3 of the Act. So according to him, only after proper enquiry or survey, the patta was transferred. As mentioned earlier, this involves purely a civil dispute. The learned counsel appearing for the second respondent would submit that it is a clear case of forgery and so it requires proper trial and only during the course of trial process, the truth will come to light. According to him, this is not a fit case requires interference of this court to quash the proceedings.

9. Even though various judgments have been cited by the learned counsel appearing for the petitioner, as mentioned earlier, it involves a simple issue of *non est factum*, which can be agitated and decided only by instituting a civil suit. Prima facie, it is seen that no material is available to show that the disputed document namely the partition deed as well as the UDR patta are forged documents. So the continuation of proceedings against the petitioner will amount to abuse of process of court and law. So this petition



10. In the result, this criminal original petition is **allowed**. The impugned proceedings in CC No.89 of 2020 on the file of the Judicial Magistrate, Melur is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar (CS)

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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.

To

1. The Judicial Magistrate, Melur.
2. The Inspector of Police,
Othakadai Police Station,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.MUTHU SARAVANAN, Advocate (SR-13783[F] dated 23/03/2022)

Crl.O.P. (MD) No.10938 of 2020
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MGJ(04.04.2022) 5P 5C