



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.18957 of 2018

and

Crl.MP(MD)Nos.8460 and 8461 of 2018

WEB COPY

Umaiyerupagam

: Petitioner/A6

Vs.

1.The State rep. By
The Inspector of Police,
District Crime Branch,
Madurai.

(Crime No.2 of 2018)

: R1/Complainant

2.N.S.Karthikeyan

: R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.13 of 2018 on the file of the Special Court for Exclusive Trial of Land Grabbing Cases, Madurai, in connection with Crime No.2 of 2018 on the file of the Inspector of Police, District Crime Branch, Madurai, and quash the same as against the petitioner.

For Petitioner

: Mr.J.Sankara Pandian

For 1st Respondent

: Mr.P.Kottai Chamy

Government Advocate

(Criminal side)

For 2nd Respondent

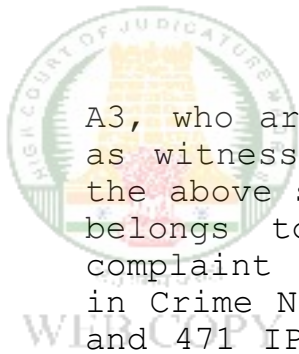
: No appearance

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.13 of 2018 on the file of the Special Court for Exclusive Trial of Land Grabbing Cases, Madurai.

2.The case of the prosecution in brief:-

The well situated in Survey No.59/2 belongs to the father of the de-facto complainant by way of purchase. After the death of the father, the de-facto complainant got the patta transferred in his name, on 17/08/2010. Based upon which, entries were made in the revenue records. Knowing well that the first accused has no right over the property, he executed a settlement deed in favour of A2 and



A3, who are his sons. In the above said document, A4 and A5 signed as witnesses. The 6th accused was the document writer. He created the above said settlement deed, knowing fully well that the property belongs to the de-facto complainant. So on the basis of the complaint given by the de-facto complainant, a case was registered in Crime No.2 of 2018 for the offences under sections 420, 465, 468 and 471 IPC and after completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.13 of 2018 by the trial court.

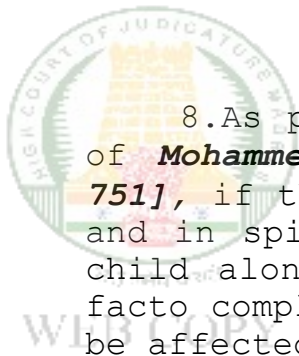
3. Seeking quashment of the same, this petition is filed by the 6th accused.

4. Heard both sides.

5. The petitioner is the scribe of the disputed document. From the preamble portion as well as from the case of the parties, it is the case of the de-facto complainant that his junior paternal uncle by name Ganesan, the first accused has no right over the property in respect of which, the disputed settlement deed has been executed by him in favour of one Muthukumar and Senthil Kumar.

6. The learned counsel appearing for the petitioner would submit that there was an unregistered partition deed between the father of the de-facto complainant namely Selvaraj and his junior paternal uncle Ganesan, in which the well situated in Survey No.111/2 was allotted in the name of both the brothers. According to the learned counsel appearing for the petitioner, since common right has been granted in favour of the first accused, he has executed a settlement deed only in favour of 1/4th share in the above said common well. It is not a fraudulent document. But however, this plea cannot be raised by this petitioner, since he happened to be only a scribe. The reason being that survey number mentioned in the unregistered partition deed is different from one that has been mentioned in the settlement deed. So in the settlement deed, the survey number is mentioned as 59/2, whereas as mentioned earlier, survey number in the unregistered partition deed is mentioned as 111/2. Whether subsequent to the above said unregistered partition deed, there was change in survey number, no document is available. But in respect of the property situated in survey No.59/3B, which is shown as 1st item in the disputed settlement deed, standing in the name of A1. But in respect of the 1st item, the de-facto complainant has not claimed any right.

7. Now Whatever it may be the position, considering the limited role that alleged to have been played by the petitioner, the offences under sections 420, 465, 468 and 427 IPC may not get attracted against this petitioner.



8.As per the judgment of the Hon'ble Supreme Court in the case of **Mohammed Ibrahim Vs. State of Bihar and another [(2009) 8 SCC 751]**, if the first accused did not have any right over the property and in spite of that, executed a settlement deed in favour of his child alone. The affected persons are only the child and the de-facto complainant. But the right of the de-facto complainant may not be affected in such sort of the settlement deed.

9.Whether any criminality can be attached or not is a matter for consideration during the course of trial. So I am not expressing any view with regard to the legality of the disputed document. Suffice to say that this petitioner being a scribe, at no stretch of imagination, in the absence of allegation that he also conspired with the co-accused in executing a settlement deed, the offences under sections 420, 465, 468 and 471 IPC may not be attracted against him. So on that ground, this petition is liable to be allowed.

10.In the result, this criminal original petition is **allowed**. The impugned CC No.13 of 2018 on the file of the Special Court for Exclusive trial of Land Grabbing Cases, Madurai, is hereby quashed as against this petitioner alone. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2022

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 Judge,
The Special Court for
Exclusive trial of Land Grabbing Cases,
Madurai.

2.The Inspector of Police,
District Crime Branch,
Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

WEB COPY

CrI.O.P. (MD) No.18957 of 2018
31/03/2022

SJ (CO)

GC (08.06.2022) 4P 4C