



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2022

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL OP(MD) . Nos.16645 of 2019, 524 of 2020 and 2477 of 2020
and CMP(MD)Nos.9875 of 2019, 181, 182, 1271, 1272 of 2020

K.Angammal ...Petitioner in Crl.OP(MD)No.16645 of 2019/
3rd Accused

1.K.Deivasenathipathy

2.D.Radhamani ...Petitioners in Crl.OP(MD)No.524 of 2020/
Accused No. 1 & 2

K.Govindaraj ...Petitioner in Crl.OP(MD)No.2477 of 2020/
Accused No.4

Vs

K.Subramaniyan ...1st Respondent/Petitioner/Complainant

COMMON PRAYER :- These Criminal Original Petitions filed under Section 482 Cr.P.C.to call for the records pertaining to the C.C.No.267 of 2019, on the file of the learned Judicial Magistrate No.1, Karur and quash the same as illegal as against the petitioners and incompetent by allowing the present Criminal Original Petitions.

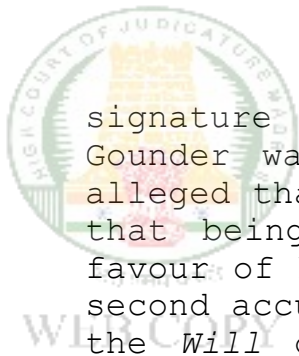
In all cases:

For Petitioners	: Mr.Anand for Mr.M.Guru Prasad (in CRL OP(MD)No.16645 of 2019 & 524 of 2020) for Mr.P.Samuel Gunasingh (in CRL OP(MD)No.2477 of 2020)
For Respondent	: Mr.Raja Karthikeyan

COMMON ORDER

These Criminal Original Petitions have been filed to quash the case in C.C.No.267 of 2019, on the file of the learned Judicial Magistrate No.1, Karur, against the petitioners.

2.All the petitioners are arrayed as A1 to A4 in C.C.No.267 of 2019, on the file of the learned Judicial Magistrate No.1, Karur, having been taken cognizance under Sections 467, 468, 471 r/w 34 of IPC. The respondent lodged a private complaint alleging that



signature and thumb impression of his father viz., V.P.Kuppusamy Gounder was forged in the *Will* dated 21.08.2006. It is further alleged that the *Will* was executed by his father on 11.03.1993. When that being so, the third accused executed a settlement deed in favour of his grand son, viz., D.Nizhanth, the son of the first and second accused, without having any title over the property, since by the *Will* dated 11.03.1993 only the first and second accused are having equal share in respect of the subject property.

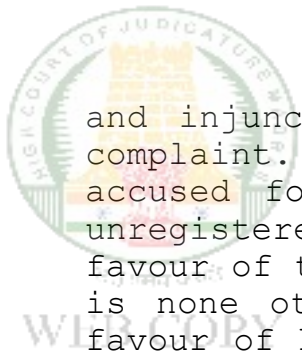
3.The learned counsel for the petitioners submitted that the first petitioner and the respondent are brothers and due to dispute between them from the year 2011, the respondent filed a suit in O.S.No.29 of 2012, on the file of the Principal District Court, Karur, for the relief of partition as against all the family members and the same was dismissed for default on 06.02.2017. Again, the respondent filed a suit for partition in O.S.No.20 of 2015, against the family members, on the file of the Principal District Court, Karur. The petitioners are parties in the said suit and in that suit, the respondent challenged the settlement deed executed by the third accused, in favour of his grand son, as null and void. He also sought for the relief of partition, on the strength of *Will* dated 11.03.1993.

4.While pending the suit, the respondent filed I.A.No.105 of 2017, to send the unregistered *Will* dated 21.08.2006 and the registered *Will* dated 11.03.1993, along with the sale deed executed by their father dated 29.11.2004, to compare the signature and thumb impression of their father. Though it was allowed by an order dated 20.10.2017, thereby directed to compare the thumb impression of their father, the thumb impression was not referred for comparison. Aggrieved by the same, the respondent filed a revision in CRP(MD) No.2009 of 2017 and subsequently it was allowed. Accordingly, both the *Wills* were sent for comparison of signature and also for Handwriting Expert's opinion.

5.While pending the proceedings, the respondent filed this present complaint raising the very same allegations. When the entire issue is civil in nature, the trial Court ought not to have taken cognizance of the offences under Sections 467, 468, 471 r/w 34 of IPC., against the petitioners.

6.The present complaint is nothing but a pure civil dispute between the family members. The motive of the respondent is to achieve things indirectly that could not be achieved directly. The learned counsel appearing for the petitioner also relied upon the decision of Hon'ble Supreme Court ***in Sardool Singh and another Vs Smt.Nasib Kaur*** reported in ***SCC 1987 146***.

7.The learned counsel appearing for the respondent submitted that though the civil suits are pending, it is only for partition
<https://hcservices.ecourts.gov.in/hcservices/>



and injunction. Those suits are nothing to do with the present complaint. The allegations are very serious in nature. The first accused forged the signature of their father and fabricated the unregistered *Will* dated 21.08.2006, thereby, allotted the share in favour of the respondent herein. That apart, the third accused, who is none other than their mother, had executed settlement deed in favour of her grandson dated 21.09.2012, without any title over the property. Therefore, there is *prima facie* case made out to attract all the offences against the petitioners, which has to be tried with all documentary evidence.

8.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

9.Admittedly, the petitioners and the respondent are close relatives. The first accused and the respondent are brothers. The third accused is none other than their mother. Their father executed a registered *Will* dated 11.03.1993. Accordingly, the first respondent and the respondent were allotted equal share in the property. Thereafter, another *Will* dated 21.08.2006 executed by their father, thereby, allotted share in favour of the respondent herein. After demise of their father, the third accused, who is the mother of the first accused and the respondent, executed settlement deed in favour of her grand son on 21.09.2012. Further, the respondent filed a suit in O.S.No.20 of 2015 for partition. While pending the said suit, the respondent filed I.A.No.105 of 2017, to send the unregistered *Will* dated 21.08.2006 along with registered *Will* dated 11.03.1993 and the sale deed executed on 29.11.2004, to compare the signature and thumb impression of their father. Though, it was allowed, the thumb impression was not referred for comparison. Therefore, he preferred a revision before this Court and by an order dated Crl.R.C(MD) No.2009 of 2017, this Court allowed the Criminal Revision Case and accordingly the signatures as well as the thumb impression of both *Wills* along with sale deed executed by their father, were sent for Handwriting Expert's opinion and it is pending for Expert's opinion and report.

10.The Hon'ble Supreme Court of India in the case referred supra held that the respondent cannot be permitted to institute a criminal prosecution on the allegation that the *Will* is a forged one. The question will have to be decided by the civil Court, after recording the evidence and hearing the parties in accordance with law. When the validity of the *Will* is being tested before a civil court, the criminal proceedings cannot be proceeded further and it is liable to be quashed.

11.The above decision is squarely applicable to the case on hand, since already the respondent filed a suit for partition in O.S.No.20 of 2015, on the file of Principal District Court, Karur, for partition, as well as to declare the settlement deed dated



21.09.2012, as null and void. In view of the above, the impugned complaint cannot be sustained as against the petitioners, till a finding to be rendered by the Civil Court.

12. Accordingly, these Criminal Original Petitions are allowed and the case in C.C.No.267 of 2019, on the file of the learned Judicial Magistrate No.1, Karur, is hereby quashed against the petitioners herein. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PNM

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 No.I,
Karur.

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

+3 CC to M/s.RAJA KARTHIKEYAN, Advocate (SR-15461 TO 15463[F]
dated 30/03/2022)

COMMON ORDER
IN

CRL OP(MD) . Nos.16645 of 2019, 524 of 2020
and 2477 of 2020

and CMP(MD)Nos.9875 of 2019, 181,
182, 1271, 1272 of 2020

Date : 29/03/2022

svs(CO)

GC(11.05.2022) 4P 6C