



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23/02/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.19689 of 2019

and

Crl.MP(MD)Nos.11505 and 11507 of 2019

Janarthanan : Petitioner/A1

Vs.

1.State rep. By

The Inspector of Police,

District Crime Branch Police Station,

Thoothukudi District,

(Crime No.10 of 2009)

: R1/Complainant

2.Rosilin

: R2/De-facto complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the charge sheet in CC No.26 of 2013 on the file of the learned Special Court for Land Grabbing Cases, Thoothukudi and quash the same so far as the petitioner is concerned.

For Petitioner : Mr.Niranjana S.Kumar

For 1st Respondent : Mr.B.Nambi Selvan

Additional Public Prosecutor

For 2nd Respondent : Mr.A.Prasanna Rajadurai

ORDER

This petition has been filed seeking quashment of the case in CC No.26 of 2013 on the file of the Special Court for Land Grabbing Cases, Thoothukudi.

2.The case of prosecution in brief:-

The property in survey No.24/2 measuring about 3.20 acres belongs to one Janaki Ammal by way of registered sale in Document No.5/1962. The total extent covered in the above said survey is 4.38 acres. The remaining 1.18 acres belongs to the ancestors of the accused. The above said Janaki Ammal sold the southern 2 acres to A1. The remaining 1.20 acres were divided by partition between the children of the Janaki Ammal. The property was allotted to Janaki Ammal. Later, she executed a Will in respect of the property in favour of Rosilin. A2 to A4 are entitled to 1.15 acres. Having known the above said fact, they sold their 1.18 acres to A1. They have also included the land, which belongs to Janaki Ammal measuring



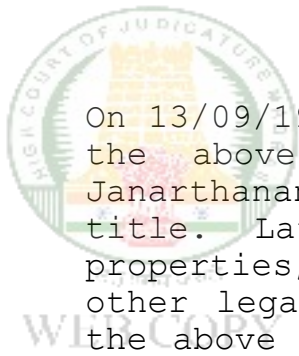
about 1.20 acres. They have created a false and forged document. So, they are liable to be punishable under sections 467, 468 and 471 IPC.

3. Seeking quashment of the above said final report, this petition came to be filed by A1 on the ground that after the purchase of 2 acres of land in survey No.24/2 from Janaki Ammal on 13/09/1988, the remaining 1.20 acres belong to Suvisesamani, Salamon, Gabriel, Isravel and Jeevarathinammal and this petitioner. The petitioner purchased the property from the above said persons on 08/06/1993. In order to grab the above said 1.20 acres of land, the 2nd respondent induced her mother-in-law namely Janaki Ammal to create a forged Will and with that Will, she lodged a complaint before the first respondent police and the first respondent without properly conducting the enquiry, registered a case and final report has also been filed.

4. The 2nd respondent as a power of attorney of the above said Janaki Ammal, filed a suit in O.S No.114 of 2010 before the Additional District Munsif, Thoothukudi for declaration and injunction in respect of 1.20 acres of land and declaring that the sale deed, dated 08/06/1993, which is standing in the name of the petitioner is null and void. After full trial, the suit was dismissed on 27/04/2016 and there is a clear finding that the 2nd respondent failed to establish her right over the property. Since the civil court finding is clear with regard to the right and title of the 2nd respondent, continuation of the criminal proceeding is nothing, but abuse of process of court.

5. Heard both sides.

6. Straightway, we will go to the judgment of the trial court passed in O.S No.114 of 2010. This will give more clarity to the issue, which exists between the parties. The preamble portion of the order is more than sufficient to know the factual matrix. The de-facto complainant is the daughter-in-law of one Janaki Ammal. Through her power agent, she filed the above said suit before the Additional District Munsif, Thoothukudi against this petitioner and others and the prayer in that suit, is for declaration that the sale deed, dated 08/06/1993, which was executed by the first defendant in favour of other defendants namely 2 to 4 is null and void and for consequential permanent injunction. As stated above, that suit came to be dismissed. The 1st item of the suit property is noted as 3.20 acres in survey No.24/2 and the 2nd item of the suit property is noted as 1.20 acres lying on the eastern side. Janaki Ammal claimed that originally the properties belong to one Ponnusamy Nadar and he executed the sale deed in favour of Bentley and in favour of his grand-sons and he appointed the father of the grand-sons namely Bentley as a guardian. After the death of the said Bentley, it came into effect. The said Janaki Ammal is the wife of the above said Bentley. The entire property came into possession and enjoyment.

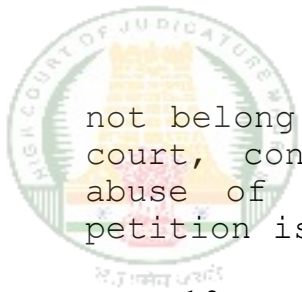


On 13/09/1988, Janaki Ammal sold the 2 acres on the southern side in the above said survey number to the first defendant namely Janarthanan and the remaining 1.20 acres was in his enjoyment and title. Later in respect of the remaining portion and other properties, a partition was effected between Janaki Ammal and the other legal heirs on 04/08/1997 and in that partition, 2nd item in the above said 1.20 acres, now in dispute came into the possession of Janaki Ammal by way of allotment. Even in the sale deed, which was executed in favour of the first defendant namely Janarthanan, four boundary has been clearly mentioned stating that the disputed property belongs to Janaki Ammal. It is the further allegation that for the purpose of usurping the above said disputed property, the first defendant appears to have sold the property to the other defendants. So with these pleadings, the trial was undertaken.

7.The case of the first defendant, who is the second respondent herein is that the disputed property never belongs to Ponnusamy Nadar and Janaki Ammal. That property originally belonged to Samy Nadar and Ramasukkiran Nadar and other legal heirs. They were in possession and enjoyment of the property. From the lawful owners, this petitioner purchased the property on 08/06/1993. The entire 2.30 acres, which was purchased by this petitioner shows that the petitioner was in possession and enjoyment.

8.With these pleadings, apart from the pleading of the co-defendants, both the parties went for trial. A specific issue has been framed by the trial court as to whether the disputed document, dated 08/06/1993 is null and void. Actually that sale deed has been executed by the defendants 2 to 4 to the 1st defendant. But in the pleadings, it has been wrongly mentioned that the first defendant sold the property to the 3rd defendant. Now whatever may be, the trial court has recorded a clear finding to the effect that the Will, which was profounded by Janaki Ammal was not properly proved. Apart from that, the title over the disputed property was also not proved by Janaki Ammal. Subsequent to the purchase made by the first defendant, she sold the property to the 13th defendant, who in turn sold the property to other third parties and several documents have been executed subsequent to the above said sale. Similarly because, the northern portion has been mentioned wrongly that it belongs to Janaki Ammal. It will not create any right or title. So when there is a clear finding to the effect, now the case of the defendants is that it is a clear case of forgery and creation of false documents, which require proper investigation is not at all acceptable.

9.The complaint, as stated above, was filed on 15/04/2009 and now the judgment of the civil court is dated 27/04/2016. Even though the complaint has been given much before the date of the judgment, reading of the decree shows that the plaint was presented on 19/03/2010 and one year prior to that, the present FIR has been



not belong to Janaki Ammal, which is also binding upon the criminal court, continuation of the criminal proceedings will amount to abuse of process of court and law. On that sole ground, this petition is liable to be allowed.

10. Further even if, it is taken that the petitioner must undergo the trial process, 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]**, the offence of 420 and 468 IPC do not attract to the factual issue. It is a pure case of title dispute between the parties. Since the title has also been declared by the competent civil court, it is binding upon the criminal court, even on the factual issues, the offences are not attracted.

11. In the result, this criminal original petition stands **allowed**. The impugned charge sheet in CC No.26 of 2013 pending on the file of the Special Court for Land Grabbing Cases, Thoothukudi is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (W)

// 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 Special Court for Land Grabbing Cases,
Thoothukudi.
2. The Inspector of Police,
District Crime Branch Police Station,
Thoothukudi District,
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



+1 CC to M/s.NIRANJAN S KUMAR, Advocate (SR-8178[F] dated
23/02/2022)

Crl.O.P. (MD) No.19689 of 2019
23/02/2022

SS (CO)

KB(18.03.2022) 5P 5C