

3 The learned Counsel for the applicant submits that

there is reliable documentary evidence on record to show that the

land in question was fraudulently transferred in the name of accused no.1 by suppressing the fact that the executor of concerned sale deed had already died prior to the execution of the same. She pointed out so many documents on record which are part of Record and Proceeding, such as sale deed, death certificate of the executor of the same, concerned mutation entry, etc.

4 On the contrary, the learned Counsel for respondents, strongly opposed the submissions made on behalf of the applicant-complainant and pointed out that the death certificate of Vajinath Laxman Thalkari, who was the executant of the sale deed in question is based on fraudulent record. He further pointed out that the concerned Block Development Officer had also given one certificate and according to that, there was death entry of only one person in the month of July 1989. According to him, the complainant-applicant, being the political person, has lodged false complaint on the basis of fabricated evidence. As such, he prayed for rejection of the application.

5 On going through the record and proceeding of the original case, it appears that the sale deed in question is dated 11.09.1989 and admittedly, the name of executor is Vajinath Laxman Thalkari. However, the death certificate produced by the

applicant on record indicates that Vaijinath Laxman Thalkari had died on 05.07.1989 that means two months prior to the execution of the said sale deed. It appears that on the basis of said sale deed, Respondent No.1 had filed suit for declaration of his ownership wherein respondents no.2 and 3, being the representatives of Gram Panchayat entered into compromise with him.

6 Though the learned Counsel for the respondents submitted that the death certificate of Vaijinath is not genuine and based on false record, but it is exhibited on the basis of said record. Though it is contended by the learned Counsel for the respondents that the original record was tampered, but on perusal of the same, it appears that there is no tampering at least in respect of death entry in the month of July 1989. Further, there appears correction only in respect of the serial number of entries recorded in the month of April and May 1989 and, therefore, such correction is immaterial since it is not in respect of the death entry of Vaijinath.

7 Further, the learned Counsel for the respondents has also pointed out that the concerned BDO had produced one certificate mentioning that there is only one death entry in the month of July 1989 and, therefore, the same falsified the death of Vaijinath. Unfortunately, the said certificate of Block Development

Officer could not be found on record and appears to be destroyed but as per the learned Counsel for the respondents, no witness was examined in respect of the said certificate and, therefore, the act of learned Trial Court, exhibiting the said certificate even after closing of the evidence by the respondents-accused, definitely appears improper. Even otherwise also, as per the record of *Gram Panchayat*, there were two death entries in the month of July 1989, which is contrary to the certificate of Block Development Officer. It is significant to note that the death entry is firstly taken into *Gram Panchayat* record and then it is to be forwarded to the BDO Office, as narrated by the concerned witness of *Gram Panchayat* in his cross examination. Therefore, reliance by the learned trial Court, on such BDO's certificate, is also doubtful.

8 The learned Counsel for the respondents pointed out that the applicant-complainant is influential political person and, therefore, lodged false complaint. However, the documentary evidence on record in respect of the sale deed in question speaks differently. It is settled position that anybody can set in motion the criminal law for taking cognizance of serious offences. Therefore, considering all these facts, the applicant has made out an arguable case which needs further consideration.

9 In view of the same, Criminal Application is hereby
allowed and the appeal of the applicant be registered after removal
of office objections, if any.

10 Criminal Application is accordingly disposed of.

SANDIPKUMAR C. MORE
JUDGE

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