IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

A.S.No.10 of 2012 and
C.M.P.Nos.19865 and 23815 of 2019

Mohan Ranganathan ... Appellant

..vs..

S.A.Bheemaraja ... Respondent

This Appeal is filed under Section 96 of Civil Procedure Code against judgement and decree dated 28.09.2011 made in O.S.No.7822 of 2010 on the file of the learned Additional District Judge, Fast Track Court I, Chennai.

For Appellant	:	Mr.N.Manokaran
For Respondent	:	Mr.K.Mahalingam

JUDGMENT

This appeal is filed against the judgment and decree of the learned Additional District Judge, Fast Track Court No.I, Chennai, in O.S.No.7822 of 2010 dated 28.09.2011.

2 The appellant filed the suit in O.S.No.7822 of 2010 before the learned Additional District Judge, Chennai, against the respondent seeking to direct the respondent to pay a sum of Rs12,00,000/- with interest at 9% from the date of suit towards damages and for costs.

3 The case of the appellant/plaintiff as per the averments made in the plaint is that he is the owner of the property situated at No.43, Padur Village, Chengalpattu Taluk, comprised in S.No.223/2, measuring an extent of 1 acre and 38 cents. He purchased the above said property from one C.A.Khabeer by means of two sale deeds dated 18.4.2006 and 19.4.2006, registered as Document Nos. 3526/2006 and 3545/2006, on the file of the Sub-Registrar, Thiruporur. The right and title of appellant/plaintiff's vendor in the property has been confirmed by a decree passed in his favour in O.S.No.8667/1985 and in the above said suit one Mehrunnissa and others were the defendants. The appellant/plaintiff after purchasing the property, applied for patta and the same was under consideration by the authorities.

4 In the mean time the respondent/defendant had purchased the very same property by way of a sale deed dated 20.10.2006 from one Kasturi Ammal who traced her title from Mehrunnisa against whom the appellant/plaintiff's vendor got a decree in the above said suit. In other words, Mehrunnissa who did not have any right or title over the property had sold it to one Manickam and two others who in turn had sold to Kasturi Ammal from whom the respondent/defendant purchased the property. When Mehrunnissa herself does not have right over the property, no one else claiming under her can have any right or title over the property on the principle that transferee cannot have a better right or title than what the vendor had.

5 The defendant after getting an illegal sale deed executed in his favour, illegally obtained patta in his name. The plaintiff, on coming to know about this, immediately gave his objections and the Tahsildar, Chengalpattu, by his order dated 15.5.2007 cancelled the patta, issued in the name of the defendant. The defendant filed an application before the RDO, Chengalpattu, challenging the said order and the said application was rejected.

6 In the meantime, on 29.3.2007 the sale deed dated 20.10.2006 executed by Kasturi Ammal in favour of the defendant was cancelled amongst themselves by a Deed of Cancellation of sale deed dated 29.3.2007 and registered as Doc. No.9228 of 2007 on the file of the SRO, Tiruporur. The defendant gave a complaint to the police on 5.6.2007 and the same was registered in Crime No.16/2007 on the same day. The complaint was given against the plaintiff, his brother, his vendor and two others, as if they only concocted and registered the cancellation of sale deed.

7 On 14.6.2007 itself the plaintiff came to know about the above complaint and he immediately rushed to the Sub-Inspector of Police, DCB, who registered the FIR. In the complaint, the defendant had mentioned that the plaintiff and four others have conspired and committed forgery and cheating to grab the property from the defendant. On the very same day the concerned police took thumb impression and signature from him and 4 others. The plaintiff clearly understood that the defendant had deployed this ploy of giving a criminal complaint against the plaintiff only to harass him and force him to give up the right in the property.

8 In the meantime the defendant represented before the Revenue Authorities that the cancellation deed was forged by the plaintiff and that a complaint is pending before the police. At that time the plaintiff understood that the defendant has given this complaint intentionally to prejudice the minds of the Revenue Authorities who were deciding the issue of grant of patta. The plaintiff submits that he understood that the defendant was maliciously prosecuting him knowing fully well that the plaintiff had no role to play in the execution of the Deed of Cancellation.

9 During the investigation, the police had taken steps through court to send the finger print samples to the Tamil Nadu Fingerprint Bureau and the sample signatures to Forensic Sciences Department and report was called for. In the meantime the defendant filed Crl.O.P.No.1689/2008, before this Court for direction to the police to file a final report in a time bound manner and this Court by order dated

31.1.2008 directed the concerned police to file final report within 2 months. In the meantime, both the Fingerprint Bureau and Forensic Sciences Department submitted their reports to the concerned court, stating that the finger print and the signatures of the plaintiff as well as 4 others arrayed as accused did not match the signature and fingerprints found in the cancellation deed. Thus his name was cleared and the falsity of the defendant's complaint stood exposed. Even thereafter, the police did not file a final report which made the plaintiff and others to file Cr1.O.P.No.10358/2008, before this Court, for a direction to the police to file the final report. This Court by an order dated 29.4.2008 directed the police to complete the investigation and file final report within 2 months. Even in the said petition, the plaintiff and others had clearly brought out the fact that the complaint is false and the same has been reaffirmed by the report of the Fingerprint Bureau and the Forensic Sciences Department. Only after considering the said facts, this Court fixed the time limit.

10 In spite of the direction of this Court, the police did not take any action to file the final report and the plaintiff was forced to initiate contempt proceedings in Contempt Petition No.669/2008, in which notice was ordered to the concerned police. Immediately on receipt of the notice, the Inspector of Police, DCB, filed a final report on 18.7.2008 before the Judicial Magistrate-II, Chengalpattu. The final report was filed as referred charge sheet, after referring to the report given by the Fingerprint Bureau and Forensic Sciences Department and also after obtaining a legal opinion from the Public Prosecutor. Notice of referred charge sheet was also served on the defendant and the same was filed along with the final report. The said fact was brought to the notice of the contempt court and the Court recorded that the case has been dropped by filing a referred charge sheet and closed the contempt petition by order dated 8.8.2008.

11 Hence by filing a false complaint against the plaintiff, the defendant made him to run from pillar to post to prove his innocence and caused untold hardship and loss to him. The plaintiff is a practicing Advocate and by dragging him into a criminal case by the defendant, he was not able to perform his duty as an Advocate, since he was made to go to the police station very often and undergone harassment. The defendant has given the false complaint only with the ulterior motive of intentionally prejudicing the minds of the Revenue Authorities who were deciding the issue of grant of patta. This has resulted in a serious loss of reputation and loss of money and time in discharging his duty as an Advocate. That apart, the plaintiff was put to untold and severe mental agony and stress, as a result of which he was not able to concentrate on anything. Right through, the plaintiff was bearing everything only to come out clean and prove his innocence. The final report clearly brought to light the innocence of the plaintiff and the malice with which the defendant gave the criminal complaint against the plaintiff stood exposed.

12 The plaintiff submits that the defendant has given the criminal complaint against him, without any reasonable or probable cause, but only with a malicious intention. The complaint given by the defendant was actuated by vindictiveness and to put fear in the mind of the plaintiff, to prevent him from proceeding with the patta proceedings before the Revenue Authorities. The plaintiff has suffered severe damages both in terms of reputation and pecuniary loss. The plaintiff is a respected

Advocate in High Court, Madras and hails from a respected family and on account of the malicious prosecution he was looked down upon by the members within his fraternity and his family members. The plaintiff was not able to concentrate on his profession due to the mental agony he faced and due to harassment in the hands of police, in the name of investigation and he also suffered pecuniary loss.

13 The defendant has intentionally given a false complaint against him knowing fully well that the plaintiff had no role to play in the execution of the alleged cancellation deed. The defendant wanted to use this criminal complaint as a weapon against the plaintiff in all the parallel proceedings and to create prejudice in the minds of the Revenue Authorities and courts. In the course of doing so, the defendant ensured that the plaintiff was harassed and put to mental agony. The complaint given by the defendant against the plaintiff clearly amounts to malicious prosecution and the plaintiff is entitled to claim damages against the defendant.

14 The plaintiff issued a detailed legal notice bringing all the above facts to the notice of the defendant and called upon the him to pay a sum of Rs.12,00,000/- towards damages for malicious prosecution within a period of 15days from the date of receipt of notice. The said legal notice was returned with endorsement 'refused' from the defendant and thereby he has deliberately refused to receive the notice. Left with no other effective remedy, the plaintiff has filed the above suit claiming for damages against the defendant on the ground of malicious prosecution.

15 The defendant filed the written statement before the trial Court stating that the suit is an abuse of process of law and is liable to be dismissed as frivolous and vexatious. The suit is a further attempt to black mail and compel the defendant to succumb to the unlawful claims of the plaintiff over a valuable property, over which the plaintiff has been making a false claim, without any basis and has been creating litigation after litigations. The present suit is also one such attempt. The defendant had purchased agricultural lands comprised in S.No.223/2, Padur Village, of an extent of 1 acre 38 cents, from one Mrs. Kasthuriammal, wife of Mr. Palani, under a Sale Deed dated 20.10.2006, registered as Document No.9228 of 2006, with the office of the Sub Registrar, Thiruporur. The defendant found from the title documents and the parent deeds that the said property had been originally owned by one Mr.Gulam Rasool Sahib, son of Gulam Hassain Sahib and had a Patta in his name in Patta No.65. The said Mr.Gulam Rasool Sahib passed away in the year 1948, leaving behind him, his only son Mr.Hayath Batcha (alias) Ahmed Batcha who was in possession and enjoyment of the said property. The said Hayath Batcha (alias) Ahmed Batcha died at Padur on 24.03.1981, leaving behind his wife Mehurinnissa and his children. Mrs.Mehrunnissa and her children had jointly sold the property to (1) Mr.K.Manickam, (2) Mr.K.Sekar and (3) Mr.K.Mohan, under a Sale Deed dated 19.06.1985, registered as Document No.1447/1985 and the said three persons had obtained Patta No.337, in their names and the same is entered in the Village 'A' Register. Thereafter the said three persons sold the property to one Mra.Kasturiammal under a Sale Deed dated 21.12.1988, registered as Document No.3246/1988. The Patta was also in the name of Mra.Kasturianmal. Thus it can be seen that the Patta which stood in the name of Mr.Gulam Hassain Sahib was transferred in the name of K.Manickam, Mr.K.Sekar and Mr.K.Mohan, followed by Kasturiammal in the past. Mrs. Kasturiammal had been in possession, occupation and enjoyment of the property, along with Patta and other revenue records, ever since the date of her purchase nearly for two decades. There was no claim for the said period from any quarters.

16 Kasturiammal appears to have entered into an agreement of sale of the said property with one Mr.Gokulakannan on 19.03.2006. However, the sale did not fructify and by mutual consent, both parties cancelled the said agreement on 18.04.2006. Thereafter the said property was sold in favour of the defendant, by Mrs. Kasturiammal on 20.10.2006 and from the said date, he has been in possession, occupation and enjoyment of the property. Patta was also issued in the name of the defendant, by the authorities concerned. Thus it can be seen that the defendant, as well as her predecessors in interest have been in absolute possession and enjoyment of the property, for more than six decades. All the revenue records stand in the name of the said persons. However, one C.A.Kabeer appears to have filed a suit in O.S.No.8667 of 1985, on the file of the VI Assistant Judge, City Civil Court, Chennai, along with certain others, for restraining the defendants therein from interfering with his alleged peaceful possession and enjoyment of the property and certain other reliefs. An ex-parte Decree dated 11.11.1989 appears to have been passed by the said Court. Thereafter the said Decree has also been amended from time to time to include the relief of Declaration, relating to the title of the plaintiffs therein. The legality of such amendments themselves are questionable. The suit itself is not maintainable, however on account of defendants therein not appearing before the Court, even though the said Court did not have the necessary jurisdiction to grant the relief pertaining to the property outside its territorial jurisdiction, had passed an ex-parte decree. The said decree does not confer any title much less marketable title on the plaintiffs therein.

17 Though the plaintiffs therein had obtained such an ex-parte decree, one of the plaintiffs, in that suit, Mr.C.A.Kabeer alone had, 10 years thereafter, filed another suit in O.S.No.1076 of 1999, on the file of the III Assistant Judge, City Civil Court, Chennai, as certain authorities and a third party, seeking to adjudge the Decree dated 11.11.1989 passed in the earlier suit O.S.No.8667 of 1985, as to be binding on the defendants and to direct the defendants therein to deliver the possession of the property etc. Even though such a suit was not lawful and maintainable, the plaintiff therein appears to have initiated such proceedings, instead of executing the earlier Decree passed in the O.S.No.8667 of 1985, in case he had an enforceable decree. The said suit in O.S.No.1076 of 1999 was rightly dismissed by the Trial Court. The said suit appears to have been filed without disclosing the fact that the plaintiff therein had filed E.P.No.71 of 1995, before the appropriate Court, for executing the decree in O.S.No.8667 of 1985. Undeterred by the dismissal of O.S.No.1076 of 1999, the said Mr.C.A.Kabeer had preferred an appeal in A.S.No.555 of 2005, before the Additional District and Sessions Judge, who had also declined to interfere with the judgment of the Trial Court. Thus it can be seen that the said C.A.Kabeer has no right or valid title to deal with the said property. However, the said C.A.Kabeer has unlawfully created a Sale Deed in favour of Mr. R.Mohan Ranganathan, the plaintiff, by executing a Sale Deeds dated 18.04.2006 and 19.04.2006, knowing fully well that he had no right to deal with the property. In any event the said sale deeds does not convey any valid title to the purchaser. Based on the false Sale Deeds, which are non-est in the eye of law, Mohan Ranganathan appears to have approached the Tahsildar, Chengalpattu, seeking Patta, for the property, in his name. It appears that a reference has also been made to a registered Deed of Cancellation of sale deed vide Doc. No.3579 of 2007 purported to have been executed by Mrs. Kasturiarumal cancelling the sale executed in favour of the defendant herein, to support the claim for Patta, by the second Respondent. The Tahsildar, Chengalpattu had in a manner completely opposed to all the principles of law and natural justice, without issuing any notice to the defendant herein, in whose name the Patta stood, unilaterally cancelled the same, by an order dated 15.05.2007, in N.C.No.2932 of 2007. The said order is opposed to all settled principles of law. The Tahsildar ought to have issued a proper notice, prior to canceling the patta. Therefore, the order passed by the Tahsildar, canceling the Patta is illegal and liable to be set aside. Upon coming to know of such unlawful cancellation of the Patta, an appeal, before the R.D.O., Chengalpattu, was filed to set aside such cancellation and restore the Patta in the name of the defendant.

18 The R.D.O., issued notices to various persons, who are all not connected with the land of the proceedings in any manner and called for objections, from persons, who had no locus to participate in the proceedings. After such proceedings, the R.D.O. instead of finding as to whether the order passed by the Tahsildar without issuing notice was proper or not, strangely concluded the proceedings, by advising the parties to approach the competent Court and obtain appropriate reliefs. The said order passed by the RDO was erroneous and was beyond the scope of the appeal tried by him. Aggrieved by the said order of the RDO, the respondent/defendant, preferred appeal to the District Revenue officer, Kancheepuram, within the period of limitation. The DRO had tried the said appeal along with a belated appeal, preferred by the second Respondent herein without even an application seeking to condone the delay. Such clubbing of both the appeals itself, was improper. However, the appeals were taken up and heard by the DRO. The respondent/defendant produced all relevant documents and raised legal pleas, questioning the orders passed by the Tahsildar and RDO and prayed for restoration of Patta, to him. However, after elaborately considering the submissions of the respondent/defendant, as well as second Respondent, whose appeal itself was not maintainable, by orders dated 16.05.2008, the DRO had negated the prayer of the respondent/defendant. Such negation was done by the DRO on certain reasons that are based on an erroneous understanding of the facts and the legal position. As such the order passed by the DRO is liable to be set aside and the Patta in the name of the respondent/defendant is liable to be restored. The matter was also taken up to the high court and after a detailed consideration of all the issues, by orders dated 21.12.2009, passed in W.P.No.21450 of 2008 and W.P.No.15851 of 2009, set aside the order passed by the DRO and remanded the matter back to the RDO, for fresh consideration.

19 Notwithstanding the above, on a perusal of the certified copy of the Cancellation Deed, the respondent/defendant was shocked to find that his signature as well as the signature of his Vendor have been completely forged and a document has been fabricated. Even the photographs were completely different and the thumb impression in the documents also did not match with that of the Defendant or his Vendor. His PAN number is also not that of the Defendant and is a bogus one. From the above, it has become manifestly clear that interested persons who were claiming title over the property on the basis of bogus documents had created fabricated, forged and manipulated records, to show that as though the sale in favour of the Defendant has been cancelled. The Defendant informed his Vendor, Mrs. Kasthuri Anmal about the unlawful action that had happened with a view to impeach the valid title of the Defendant. The Defendant's Vendor also assured that the signature found in the said Cancellation Deed was not that of her's and she also further assured that she had not executed the said document. She had also sworn to a statement before the Police authorities, bearing out the fact that she has not executed any such Cancellation Deed. She had also sworn to an affidavit before the Revenue Authorities.

20 Since the purported Cancellation Deed itself appears to have been made only with a view to get the Patta issued in favour of the Defendant cancelled and has been done only with a view to state an unlawful claim as well as to interfere with the peaceful possession and occupation of the property by the respondent/defendant. Immediately, on coming to know of such unlawful acts, the Defendant lodged a complaint with the Police, requesting them to take necessary action, against all concerned, in accordance with law. It may be seen that except the Plaintiff, no one else will be benefited by virtue of the purported cancellation deed. As such the needle of suspicion was only pointing towards the Plaintiff and his associates. As such with a view to protect and safeguard his interest, the Defendant had followed the due process of law and had filed a proper complaint. Filing of such a complaint, as against the only rival claimant, nothing but normal and cannot be termed as malicious prosecution. However, as expected the fingerprints found in the cancellation deed, did not match with that of the accused persons in the complaint and therefore, the Police authorities appear to have closed the case as referred charge sheet. It is no body's case that the signatures and thumb impressions found in the cancellation deed are that of the accused persons in the complaint, but it is the complaint of the Defendant, that such deed would have been brought into existence, at the instance of the accused persons, since they were the only beneficiaries on account of such act of fraud. Unfortunately, the complaint was closed as above. However, from the facts narrated above it can be seen that the Complaint had both a reasonable and probable cause and had not been filed with any malafide intentions. As such the same cannot be termed as malicious prosecution. Moreover, the matter itself was not taken to the court and the Police authorities themselves had closed the matter as referred charge sheet, allegedly based on a opinion given by the Public Prosecutor. Therefore, by no stretch of imagination, it can be called as malicious prosecution resulting in any kind of hardship or damage to the Plaintiff. However, the Plaintiff appears to knowing the entire manner in which the Police authorities had investigated the case and had closed the same.

21 The complaint was only filed in the normal course and in a manner as expected of a prudent person in the given circumstances. Therefore, the complaint had neither caused any hardship nor any difficulty to the Plaintiff, giving him a right to maintain such a frivolous suit. It may be seen that there is absolutely no basis for the claim made by the Plaintiff. The matter has been transferred to trial Court, on account of the increasing of the pecuniary jurisdiction of the Original Side of the High Court Madras and the Plaintiff should be directed to pay the difference in court fee as applicable to the trial Court, under section 22 of the Tamil Nadu Court Fees and Suits Valuation Act. The above plea is also being made with a view to point out the malafide intention of the Plaintiff in filing the suit. Notwithstanding the closure of the Complaint by the Police authorities, the same is still pending consideration with another investigating agency and has not reached a finality. The Defendant undertakes to produce the necessary proof in this regard. Thus the complaint as against not having reached the finality, the suit is premature in nature and is liable to be dismissed. The Plaintiff, has no valid title, possession or Patta for the property in question and based on an ex-parte decree passed by a court which did not have the proper jurisdiction to entertain the matter, the Plaintiff's Vendor will not derive any title. However, the Defendant has also been advised to file a comprehensive suit, to clear cloud over the title of the property, in a manner known to law. The Patta issued to the Defendant is legal and valid. The action of the Thasildar canceling Patta without any notice to the Defendant is only improper and illegal.

Based on the above said pleadings, the trial Court framed the following issues for trial:-

1. Whether the plaintiff has been prosecuted maliciously by the defendant?
2. Whether the complaint preferred by the plaintiff before the police authorities reached its finality?
3. Whether the plaintiff is entitled to damages?
4. To what relief the parties are entitled?

22 In order to substantiate above said pleadings of the respective parties, during trial, PW.1 was examined on the side of the appellant/plaintiff. Exs.A1 to A32 were marked. D.Ws.1 and 2 were examined on the side of the respondent/defendant and Exs.B1 and B2 were marked. On considering the oral and documentary evidence, learned trial Judge found that appellant/plaintiff is not entitled to any relief as claimed in the suit. Against the said judgment and decree passed by the trial Court, the plaintiff has filed the present appeal.

23 The learned counsel appearing for the appellant/plaintiff would submit that the appellant is the practicing Advocate in the Madras

High Court and by virtue of the false complaint lodged by the respondent/defendant, he was repeatedly made to run from pillar to post in the manner of investigation. The appellant was also forced to repeatedly move this Court several times in order to give quietus to the criminal complaint given by the respondent/defendant against the appellant/plaintiff. The respondent/defendant wanted to keep the criminal case alive in order to prevent the appellant/plaintiff from getting patta from the revenue authorities. The appellant/plaintiff, who hails from the reputed family, due to the false criminal complaint, for the past two years, could not concentrate on his profession. Subsequently, during investigation, the cancellation deed alleged to have created by the appellant/plaintiff was sent to forensic department and the result shown that the signature and thumb impression found on the cancellation deed is not that of the appellant/plaintiff, which fact clearly reveal that the appellant/plaintiff is no way connected with the alleged cancellation deed and since there is no truth in the complaint, the police has closed the complaint as 'mistake of fact'. But during the period of investigation, the appellant/plaintiff was unnecessarily dragged to the Police Station, which caused great hardship to him.

23.1 The respondent/defendant with a bad intention to defeat the right and title of the appellant over the valuable property, knowing fully well that he has not created any bogus document, has failed the criminal complaint against the appellant/plaintiff and dragged the appellant to police station for more than two years, due to which, he could not concentrate on his profession. Therefore the appellant filed the suit for damages on the ground of malicious prosecution. The respondent, with an intention to prosecute and harass the appellant further, had filed protest petition before the Magistrate concerned, even after filing the charge sheet. Apart from this complaint, the respondent/defendant proceeded to file another false complaint through his servant namely Muniyandi and managed to get an FIR against the appellant/plaintiff under the SC/ST Act. The above fact was also admitted by the said Muniyandi in the counter filed in Crl.O.P.No.3269 of 2010, which was marked as Ex.A26. Further, the respondent/defendant filed complaint to the Vigilance and Anti Corruption against the appellant/plaintiff and the appellant was continuously harassed by the police in the manner of investigation and hence he was forced to approach this Court in Crl.O.P.No.24605 of 2010 and this Court issued suitable direction by an order dated 21.10.2010, which was marked as Ex.A29.

23.2 The respondent/defendant also filed complaint before the police for criminal trespass and the appellant was harassed, which was categorically admitted by the respondent/defendant during the course of cross examination. The apprehension of the appellant that it was the respondent/defendant who had managed to create the cancellation deed came true when the respondent/defendant along with the above said Kasturi Ammal created another document as cancellation of the cancellation deed which was concealed by the defendant and marked through the defendant as Ex.A21. The defendant had conveniently concealed all the facts regarding filing of protest petition and the order passed on the same and the cancellation of the cancellation deed and the subsequent false complaints given against the appellant/plaintiff and all these facts were clearly brought out from the respondent/defendant during the course of cross examination.

23.3 The respondent/defendant even in his written statement and proof affidavit has stated that as of he has purchased only the suit property in Padur Village and he was bonafidely prosecuting his case before the Revenue Authorities and that on the cancellation of the sale deed he suspected the appellant/plaintiff who would be the only beneficiary on such cancellation, whereas, during the course of cross examination he accepted that he has two Companies namely B.S.Relators Pvt. Ltd., and Nibi Realtors Pvt. Ltd., and apart from that he has done land dealings in his name, his wife and his daughter's name from the year 2004 onwards.

23.4 The learned counsel for the appellant/plaintiff would further submit that the respondent/defendant purchased two properties situated in Survey Nos.190 and 2013 at Padur Village in his name and his wife's name during the year 2006. The various commissions and omissions in the purchase of the property in Survey Nos.190 and 213 were also demonstrated with sufficient evidence by marking Ex.A18 to Ex.A24, wherein transactions have happened between the respondent/defendant and his wife by creating false power of attorney documents and different addresses have been given by the respondent/defendant in different documents and photographs themselves differ.

23.5 Ex.A18 did not even pertain to the concerned property in Survey No.214 and the entire transactions have happened in a hasty manner and it is only to demonstrate the fact that the respondent/ defendant was examined in detail by marking nearly seven documents. The suit property in Survey No.223/2 is the only access to the lands purchased by the respondent/defendant and his wife in Survey Nos.190 and 213 and that is the reason why the respondent/defendant became desperate to somehow acquire the property in Survey No.223/2. The respondent/defendant during cross examination was questioned regarding the decree obtained by the vendor of the appellant/plaintiff and the prior purchase made by the appellant/plaintiff from the decree holder and the same is being reflected in Ex.A32. The respondent/defendant was also asked as to whether he referred to the original document and entries made in the EC, for which, he replied that his agent D.W.2 only had taken care of the transaction and informed him there is no encumbrance. However, D.W.2 during the cross examination has revealed that he informed the respondent/defendant about the decree obtained and also entries found in the EC and in spite of the same, the respondent/defendant purchased the property. Therefore all the facts clearly shows that the respondent/defandant aware about the purchase of lands by the appellant/plaintiff and applied for the patta and based on the same revenue authorities also issued patta, but the respondent/defendant concocted the document as if the sale deed executed in favour of him was cancelled and filed complaint against the appellant/plaintiff. Therefore the complaint given by the respondent/defendant against the appellant/plaintiff is nothing but an abuse of process of law and hence the prosecution against the appellant/plaintiff based on the complaint given by the respondent/defendant is malicious.

23.6 The appellant/plaintiff was examined as P.W.1 and he marked Ex.A1 to 32 and from the reading of oral and documentary evidence, it is clear that the respondent/defendant in order to grab the property of the appellant, filing the complaint after complaint and made the appellant/plaintiff to run from pillar to past and he could not even concentrate on his profession and lost his reputation among the family members and even the persons in and around. The trial Court failed to appreciate all the above facts and the documents filed by the appellant/plaintiff and simply dismissed the suit, which warrants interference of this Court.

24 The learned counsel appearing for the respondent/defendant would submit that the appellant/plaintiff who is the practicing Advocate and law knowing person, intentionally obtained two bogus sale deeds from defeated C.A.Kabeer based on the decree dated 11.11.1989 made in O.S.No.8667 of 1985 by suppressing three suits filed for Declaration of Title before the proper jurisdictional court. The land grabber R.Mohan Ranganathan appellant/plaintiff has filed vexatious writ petition against the respondent/defendant by abusing the process of law and Court and had obtained an order by playing fraud on the Court on 21.12.2009 and thereafter again with malafide intention to crush the victim, he has filed suit a for malicious prosecution. He also instigated one K.Lakshmi to file a false case against the wife of the respondent/defendant Mrs.Sulochana Bhimaraja and thereby diverted the mind of victims in sevral ways so as to escape from his unlawful activities, by abusing the process of law and court for diverting the attention and concentration of the victims with the help of erring officials.

24.1 Similarly, based on the decree dated 11.11.1989 made in O.S.No.8667 of 1985, the appellant/plaintiff had obtained power of attorney in favour of his wife K.Anitha from the defeated C.A.Kabeer on 06.03.2009, knowing very well that the said decree has already became Stale Decree and knowing very well about the three suits filed for Declaration of Title on the files of the proper jurisdictional court and after obtaining an order dated 21.12.2009 made in W.P.No.21450 of 2008, by suppressing the above facts, approached the Tahsildar and cancelled the patta for the agricultural lands belong Mr.N.Kandasamy and Mr.N.Mohan on 26.07.2011 when they are in possession and enjoyment over 25 years from the date of purchase of the said land.

24.2 After passing the order by the DRO, during May 2015, the said victims Mr.N.Kandasamy and Mr.N.Mohan came to know about the pending suit in O.S.No.159 of 1986 and appeal suit in A.S.No.35 of 2002 and initiated various legal proceedings. Since all the unlawful attempts made by the land grabbers to take possession of the lands from the victims viz., Mr.N.Kandasamy and Mr.Mohan went futile, the land grabbers went to the extent of filing false complaint through Mehrunnisa against the victims' counsel before the Bar Council and also lodged false police complaint with intention to drive out the counsel, who has not yielded for the unlawful offer made by the land grabbers.

24.3 The learned counsel appearing for the respondent/defendant would submit that the land grabbers are instigated and sponsored to various unnecessary collusion parities, to file several collusive and vexatious petitions before this Court and also before the other Courts and thereby wasting the precious time of the Courts, since 2011 till date by abusing the process of law and court, which has to be dealt with by this Court very seriously with iron hand and by imposing heavy cost on them for abusing the process of Law and Court.

24.4 The trial Court rightly appreciated the oral and documentary evidence and the respondent has got valid sale deed. The appellant/plaintiff has created certain document as if the sale deed for the property purchased by the respondent/defendant was cancelled and instigated the revenue authorities and managed to get patta in his favour. Further he would submit that the revenue authority has no authority to issue patta, when the title is in dispute. Further it is settled proposition of law that in the patta proceedings, they have to issue notice to all the persons and thereafter only they can decide the matter. However, the patta stood in the name of the respondent/defendant was cancelled and somehow patta was issued in the name of the appellant/plaintiff and hence due to the strange cancellation of sale deed executed in favour of the respondent/defendant, the appellant/plaintiff is the only beneficiary and no other person. Therefor there is *prima facie* allegations in the complaint and hence the complaint is not motivated one and it is not malicious prosecution. The trial Court after considering the entire materials, has rightly appreciated the evidence and found that the prosecution initiated by the respondent/defendant is not malicious and hence the appellant/plaintiff is not entitled for the reliefs as sought for in the plaint and dismissed the suit, which does not call for any interference.

25 Heard the learned counsel appearing for the appellant/plaintiff and the learned counsel appearing for the respondent/defendant and perused the materials available on record.

26 The appellant has filed the suit against the respondent for damages on the ground of malicious prosecution. Admittedly the respondent gave complaint against the appellant before the police on 05.06.2007 and the same was registered in Crime No.16 of 2007. It is contention of the learned counsel for the respondent/defendant that the respondent purchased the agricultural land in Survey No.223/2 in Padur Villge to an extent of 1.38 cents from one Kasthuriammal under the registered sale deed dated 20.10.2006 and based on the parent documents the said property was originally owned by one Gulam Rasool Sahib and patta was also stood in his name. The said Gulab Rasool Sahib passed away in the year 1948 leaving behind Hayth Batcha @ Ahmed Batch, who was in possession and enjoyment of the suit property and he died on 24.03.1981 leaving behind his wife Mehrunnissa and his children. The said Mehrunnnissa and her children jointly sold the property to K.Manickam, K.Sekr and K.Mohan under registered sale deed dated 19.06.1985 and thereafter above said three persons obtained patta

No.337 in their names. Thereafter the above said three persons sold the property to Kasthuriammal under sale deed dated 21.12.1988 and she also obtained patta in her name. Thereafter the respondent purchased the property from the said Kasthurammal under sale deed dated 20.10.2006 and he obtained patta in his name. In the meanwhile the appellant obtained two bogus sale deeds dated 18.04.2006 & 19.04.2006 for the same property from the persons those who did not have title over the property. The appellant/plaintiff purchased the said property from one C.A.Kabeer, who claimed title based on the ex-parte decree dated 11.11.1989 made in O.S.No.8667 of 1985, which is only for bare injunction and subsequently execution petition filed by C.A.Kabeer in E.P.No.71 of 1995 on the files of the Sub-Court Chengalpattu was dismissed on merits on 19.11.2007. Therefore the title/right claimed by the said R.Mohan Ranganathan in the bogus sale deeds obtained from defeated C.A.Kabeer based on the decree dated 11.11.1989 made in O.S.No.8667 of 1985 is vanished. However, C.A.Kabeer has unlawfully created executed two bogus sale deeds in fvour of the appellant/plaintiff knowing fully well that he has no right to deal with the property. The appellant/plaintiff approached the Tahsildar, Chengalpet and also made reference to the cancellation of sale deed executed by the Kasthuriammal in favour of the respondent/defendnat and Tahsildar without following the procedures and even without giving any notice issued patta in favour of the appellant/plaintiff and the respondent/defendant challenged the same before the RDO, which came to be dismissed. Against the order of the RDO, the respondent/defendant filed an appeal before the DRO and DRO, after enquiry without considering the facts dismissed the appeal and hence the respondent/defendant filed writ petition in W.P.No.15851 of 2009, in which this Court set aside the order of the DRO and remanded the matter back to the RDO for fresh consideration.

27 The respondent/defendant stated that a perusal of the cancellation of sale deed vide Document No.3579/2007, it is surprised to note that the signature found in the cancellation deed is not that of the respondent/defendant and his vendor Kasthurialmmal, who also stated that she never cancelled and signature in the cancellation deed is not that of her and she also made statement before the police and she made sworn statement before the RDO in the patta proceedings and also before this Court.

28 From a careful perusal of the records, it reveal that it is an admitted fact that neither the respondent/defendant no his vendor have cancelled the sale deed dated 20.10.2006 executed by the Kasthuriammal in favour of the respondent/defendant. During the course of the investigation the bogus cancellation deed was sent to Forensic Department and the report shown that the signatures found the cancellation deed is not tallied with the signatures of the appellant/plaintiff, based on which the respondent police closed the case in Crime No.16 of 2007 as it is very difficult for the Investigating Officer to culled out the person who forged the signatures. Hence it does not mean that the appellant/plaintiff was not involved in the forgery and the respondent/defendant does not have any case at all.

29 The fact is that the respondent/defendant purchased the property from Kasthuriammal under registered sale deed dated 20.10.2006, which is subsequently cancelled in a strange manner and patta stood in the name of the respondent/defendant was cancelled by the Tahsildar and the dispute came to this Court. Further it very clear that neither the respondent/defendant nor his vendor Kasthuriammal cancelled the sale deed dated 20.10.2006. Subsequently patta was issued in favour of the appellant/plaintiff and hence naturally one would doubt the person on whose favour the patta was subsequently issued for the disputed lands. It is no body's case that the signatures and thumb impressions found in the cancellation deed are that of the accused persons in the complaint, but it is the complaint of the Defendant, such deed would have been brought into existence, at the instance of the accused persons. Hence the act of the respondent/defendant filing complaint against the appellant/plaintiff would not amount to malicious prosecution as concluded by the trial Court.

30 It is seen from the available records that several proceedings are pending and various legal proceedings filed in this regard by either parties by showing the other party as accused/objector. Considering the facts and circumstances of case, the plaintiff has to prove his case and he cannot take advantage of the weakness of the defendant. Considering the entire facts and circumstances and the oral and documentary evidence, this Court finds that the trial Court rightly appreciated the evidence and dismissed the suit on the ground that the complaint given by the respondent against the appellant in Crime No.16 of 2007 is not malicious prosecution. This Court, while allowing the connected matter in Crl.O.P.No.4751 of 2021 filed by the respondent/defendant seeking to register FIR against the appellant/plaintiff based on his complaint dated 15.12.2018 for the same allegations made in the Crime No.16 of 2007, has elaborately discussed and has given reason for allowing the above criminal original petition.

31 There is no merit in the appeal and accordingly the Appeal Suit is dismissed. The Judgment and Decree passed by the Trial Court is hereby confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

28.04.2023
(6/6)

Index : Yes/N o
Speaking/Non speaking order
cgi
To

The Additional District Judge, Fast Track Court I, Chennai.

P.VELMURUGAN

cgi

<u>Pre-delivery Judgment in</u>
<u>A.S.No.10 of 2012 and</u>
<u>C.M.P.Nos.19865 and 23815 of 2019</u>

<u>28.04.2023</u>
(6/6)