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Crl OP No. 793 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **24.04.2023**
PRONOUNCED ON : **10.05.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 793 of 2021
and
Crl.M.P. No. 467 of 2021

1. T.T. Mani
2. Mrs.Subashini
3. Mrs.Rajeswari
4. Mrs.Jagadheeswari ... Petitioners

Versus

Mrs. K. Vijayalakshmi ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C. No. 9180 of 2019 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioners : Mr. K.V. Sundararajan & Mr. M. Murali

For Respondent : Mr. D. Vijayan & Mr. B. Pachaimuthu

ORDER

The petition is to quash the complaint filed for the alleged offence under Sections 406, 417, 418, 420 and 423, read with Sections 120(B)



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and 34 of the Indian Penal Code, 1860.

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2. It is alleged in the complaint that the petitioners (A1 to A4) had claimed that they were the owners of the property measuring 1261 sq.ft., together with building at Triplicane; that the respondent purchased the said property for a total consideration of Rs.63,20,000/- on 10.09.2013; that when the accused 5 to 7 came to know of the sale deed executed by the petitioners, they demanded money from the respondent claiming right over the property; that the petitioners also demanded Rs.30,00,000/- in addition to the amount received as sale consideration; that the respondent was shocked to receive summons from this Court in C.S. No. 804 of 2017; that she came to know that the property belongs to Arulmighu Parthasarathyswamy Thirukoil, Triplicane; and that the petitioners concealed the said fact and sold the property making it appear that the property belonged to them; that since the petitioners had made false representation and; that A6 and A7 had filed a Suit in C.S. No. 804 of 2017 before this Court to defeat the rights of the respondent and hence the petitioners are liable for the offence of cheating, criminal breach of trust and the offence under Section 423 of the Indian Penal Code.



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3. Mr. K.V. Sundararajan, learned counsel for the petitioners,

submitted that it is true that the petitioners had executed a sale deed in favour of the respondent on 10.09.2013. They intended to sell only the building for a consideration of Rs.12,00,000/-. However, inadvertently they had executed the sale deed prepared by the respondent, which purported to convey the land also. They had stated in the sale deed that they acquired the property by virtue of a partition deed executed on 14.09.1978 between the first petitioner and his brothers; that in the partition deed, it is clearly mentioned that the land belongs to the temple and the first petitioner was only entitled to the superstructure. The schedule 'D' to the said partition deed would make that clear. The respondent was aware of the fact that the land on which the building was situated belonged to the temple, and the allegation of cheating has been invented to counter the Suit filed by the petitioners. The petitioners' cousins, who are inimical towards the petitioners on account of the property dispute, found that in the Schedule of the sale deed executed by the petitioners, the land was also shown as property conveyed. Hence their cousins filed a Suit before this Court in C.S. No. 804 of 2017 praying to declare the sale deed executed by the petitioners in favour of the respondent herein as null and void and to declare that they are the



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lessees of the land. The petitioners did not realise the mistake in the schedule till then. On receipt of the summons, the petitioners sent a notice on 20.11.2017 to the respondent herein stating that the Schedule of the sale deed is not in consonance with the partition deed dated 04.09.1978; and that hence the sale is null and void and called upon them to cancel the sale deed on receiving the sale consideration of Rs.12,00,000/-. They had also filed O.S. No. 4595 of 2018 on the file of the XVI Additional City Civil Court, Chennai. The respondent remained exparte in the Suit. The City Civil Court on 04.03.2019 decreed that the sale deed dated 10.09.2013 executed by the petitioners in favour of the respondent be cancelled on refunding the sale consideration of Rs.12,00,000/- to the respondent. The learned counsel also submitted that they had deposited the said amount to the credit of the said Suit. While so, the impugned complaint has been lodged by the respondent.

4. The learned counsel for the respondent, per contra, submitted that the sale consideration was not Rs.12,00,000/- as stated in the sale deed and the respondent had paid Rs.63,20,000/- to the petitioners; that the petitioners had deceived the respondent and falsely represented that they are the owners of the land and building and conveyed it to the



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respondent; that the present attempt is to dishonestly grab the property that was sold to the respondent by the petitioners; and that the Suit filed by the petitioners is only to deprive the respondent of her property.

5. This Court, on perusal of the impugned complaint, finds that the allegation is that the petitioners deceived the respondent and made her believe that they are the owners of the land when they had only leasehold rights in the property. It is seen from the records that the first petitioners' cousin brothers had filed a Suit before this Court in C.S. No. 804 of 2017 to declare the sale made by the first petitioner and others in favour of the respondent as null and void. It appears that thereafter the petitioners realising that the property has been wrongly described in the schedule to the sale deed, issued notice to the respondent as early as 20.11.2017, calling upon them to cancel the sale deed as there was a discrepancy in the Schedule. Thereafter, the petitioners filed a Suit in O.S. No. 4595 of 2018 before the XVI Additional City Civil Court, Chennai. The respondent did not file a written statement, and hence she was set exparte. The City Civil Court passed a decree of cancellation of the sale deed dated 10.09.2013, with a further direction to the petitioners to



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refund the sale consideration of Rs.12,00,000/-. It is stated that the petitioners have also deposited the said amount of Rs.12,00,000/- to the credit of the Suit. While so, after the decree was passed by the Civil Court, the respondent came up with this impugned complaint. The impugned complaint, clearly, is an abuse of process of law. It cannot be said that the respondent was not aware that the land belonged to Arulmighu Parthasarathyswamy Thirukoil. There is a reference to the partition deed in the sale deed. The partition deed specifically states that the land belongs to Arulmighu Parthasarathyswamy Thirukoil, Triplicane. The petitioners had not suppressed the said fact. Further, the Civil Court found that it was the respondent who had prepared the sale deed to suit her convenience. The impugned complaint after the Civil Court decree, without participating in those proceedings, is only to arm-twist the petitioners. The respondent ought to have appeared and pleaded their defence in the Civil Suit. It is informed by the respondent that they have now filed a petition to set aside the exparte decree. It is for the respondent to pursue her remedy in the Civil proceedings. The allegations do not attract the offences alleged and is opposed to the 'caveat emptor' principle besides being improbable. The complaint is contrary to the findings of the Civil Court, and it is an attempt to get over



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those findings, which cannot be permitted. Hence this Court is inclined to quash the complaint.

6. Accordingly, this Criminal Original Petition is allowed by quashing the C.C. No. 9180 of 2019 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai. Consequently, the connected Miscellaneous Petition is closed.

10.05.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The II Metropolitan Magistrate,
Egmore,
Chennai.



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SUNDER MOHAN, J

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Dated: 10.05.2023