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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.9914 of 2022
and Crl.MP.No.5840 of 2022

1.Vinotha @ Vinothamma, F/A 62 yrs
W/o.T.V.Nanjundappa

2.N.Manjunath, M/A.41 yrs
S/o. T.V.Nanjundappa

.. Petitioners /Accused 1 & 2

.Vs.

1.The State rep.by
Inspector of Police
DCB Police Station
Krishnagiri.
(Crime No.4 of 2022)

.. Respondent/ Complainant

2.Harish
S/o.Anumappa

..Respondent/de facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.4 of 2022, pending on the file of the District Crime Branch, Krishnagiri, quash the same.

For Petitioners : Mr.Ravikumar Paul
Senior Counsel
for M/s.Paul and Paul

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.side)
for R1

Mr.M.Loganathan for R2



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ORDER

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This petition has been filed seeking to quash the FIR pending investigation before the 1st respondent in Crime No.44 of 2022.

2.Heard Mr.Ravikumar Paul, learned Senior Counsel for petitioners, Mr.A.Gopinath, learned Government Advocate (Crl.side) for R1 and Mr.M.Loganathan, learned counsel for R2.

3.The issue that is involved in the present writ petition has been succinctly captured in the order dated 11.8.2022 passed at the time of admission of this criminal original petition and the same is extracted hereunder:

This Criminal Original Petition has been filed to quash the FIR in Crime No.4 of 2022, on the file of the 1st respondent Police, for offence under Sections 464, 467, 471 and 420 of IPC.

2.The learned Senior Counsel appearing for the petitioners pointed out the title of the property involved in this petition. According to him, originally, the property was owned by one Muniyappa and the total extent is 13.36 acres in survey No.345. The said Muniyappa had four grandsons, each of them partitioned 1/4 shares and each become entitled to 3.36 acres. Whereas the 2nd respondent derived the title from the person, who was sold excessive land showing sale of 5.20 acres as against 13.36 acres originally entitled. It is his further contention that the petitioners also purchased 3.36 acres in three survey numbers and in the remaining area, they were in possession in the property ancestrally. It is also submitted that the patta was issued by the Head Quaters Deputy Tahsildar in this regard and encumbrance certificate is also clearly reflected the sale deed as well as the



settlement deed executed by the petitioners in the year 2007 itself. According to the learned Senior Counsel, the 2nd respondent purchased the property in the year 2020, within a five days, the patta has been changed in his name and now, the entire revenue department is supporting him.

3. Whereas the learned Senior Counsel appearing for the 2nd respondent would submit that at the time of registration of the settlement deed in the year 2007, the patta has been relied as document. According to him, the said patta has been forged by the petitioners. Hence, the complaint has been given against the petitioners.

4. On perusal of the materials, this Court prima facie satisfied it is a clear case that the dispute is with regard to the title of the property. Now, with regard to the specific allegation, on perusal of the typed set filed by the petitioners, the petitioners relied upon the patta issued by the Revenue Department even at the time of settlement in the year 2007. Now, it appears that the Revenue Department has taken U-Turn and is supporting the version of the 2nd respondent. The encumbrance certificate and 'A' register are also in the name of the petitioners is very much find place.

5. In such view of the matter, the 1st respondent Police is required to conduct investigation with regard to 'A' register and patta which are available in the Government records and also required to conduct investigation as to how the entry related to the settlement deed has not been reflected in the encumbrance certificate produced by the 2nd respondent before this Court and file a report.

6. Post the matter on 29.08.2022. Till then, the interim order already granted by this Court on 28.04.2022 is extended.

4. The matter thereafter came up for hearing on 28.4.2022 and this Court



passed the following order:

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The case of the prosecution as per the defacto complainant/R2, Harish is that he is the owner of the property measuring to an extent of 1.91 acres in Survey No.345/1D and 345/1E in Avalapalli village. The further allegations is that the accused had fabricated the documents and grabbed his property.

2. Mr.Ravikumar Paul, learned senior counsel for the petitioners would submit that the petitioners are the original owners of the property and they have purchased the property during the year 2002 and 2007. Thereafter, the 1 st petitioner had settled the property in favour of the 2nd petitioner, who is her son and there is no forgery or fabrication of documents and they have been enjoying the property for the past 20 years. While so, the defacto complainant, who has subsequently purchased the property, had stated that the petitioners have fabricated the documents and grabbed his property.

3. He would further submit that the petitioners have been granted anticipatory bail by the Court. He would also submit that the entire Encumbrance Certificate issued by the Government would reflect that the petitioners, who are the owners of the property, have been enjoying the property for the past 20 years and without taking into consideration the Encumbrance Certificate and other revenue records, the respondent police have registered a case in Crime No.4 of 2022 as against the petitioners.

4. Prima facie case is made out for grant of interim



stay. Accordingly, there shall be an order of interim stay for a period of eight weeks.

5. Learned Additional Public Prosecutor takes notice for the 1st respondent and the learned counsel for the petitioner is also directed to take private notice on the 2nd respondent.

6. Post the matter on 23.06.2022.

5.The matter once again came up for hearing on 10.02.2023 and this Court passed the following order:

This Criminal Miscellaneous Petition is filed to initiate inquiry and to prosecute the 2nd respondent under Section 340 r/w Section 195 of CrPC.

2. When the matter is taken up, learned counsel for the petitioner in Crl.M.P.No.1150 of 2023 sought permission of this Court to withdraw this petition with liberty to take appropriate steps in the manner known to law.

3. In the light of the submission of the learned counsel for the petitioner and also the Judgment of Hon'ble Supreme Court, in the case of "Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another" reported in [2005 4 SCC 370], this Courts grants permission to the petitioner to withdraw this petition, with liberty to workout his remedy in the manner known to law.

4. When it is pointed out to the learned Government Advocate (Criminal side) that, this Court, on 11.08.2022 directed the 1st respondent to conduct investigation, with regard to non reflection of Settlement Deed in the encumbrance certificate



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produced by the 2nd respondent and to file a report in that regard, learned Government Advocate (Criminal side) seeks time to file report.

5. Post the matter after two weeks.

6. Pursuant to the above order, a status report has also been filed by the DSP of Police, District Crime Branch, Krishnagiri District.

7. The specific allegation that has been made by the 2nd respondent in the Complaint given to the 1st respondent is that the property in Survey Nos. 345/1D and 345/1E measuring an extent of 1.90 acres was purchased by the 2nd respondent along with one Prabhu through a registered Sale Deed dated 6.1.2020 and this document was registered as Document No. 233 of 2020. The 2nd respondent claims that the purchase was made from one Chowdappa. It is further stated in the Complaint that the said Chowdappa had purchased the property on 21.5.2007 through a registered Sale Deed Document No. 8358 of 2007 from Kurrappa and 16 others. The predecessor in title traced their right through a Sale Deed dated 26.7.1962.

8. It is alleged in the Complaint that the 1st petitioner is the owner of the property by virtue of a registered Sale Deed dated 19.4.2002 and by virtue of this Sale Deed she purchased the property in Survey Nos. 345/1A2, 345/1A3 and 345/1C. Thereafter, the 1st petitioner is said to have executed a settlement deed in favour of the 2nd petitioner, who is her son on 7.2.2007 and had settled the property situated



at Survey No.345/1D and 345/1E to an extent of 3.29 acres. According to the 2nd respondent, the extent of 1.90 acres that was purchased by them in the year 2020 was also added to the said Settlement Deed. It is with these allegations, the Complaint was entertained by the 1st respondent and an FIR came to be registered in Crime No.4 of 2022 for offence u/s.464, 467, 471 and 420 IPC.

9.To constitute the offence of forgery, the complaint has to first satisfy the requirement u/s.464 viz., that the 1st petitioner has executed a false document in favour of the 2nd petitioner. If that is not established, neither 467 nor 471 will be attracted. In this case, the 1st petitioner claims to be the owner of the property in Survey Nos.345/1D and 345/1E and such right is claimed by the 1st petitioner on the ground that its an ancestral property. Accordingly, the 1st petitioner has executed the Settlement Deed in favour of the 2nd petitioner as early as in the year 2007. The 2nd respondent was no where in the picture when this Settlement Deed was executed by the 1st petitioner in favour of the 2nd petitioner. After nearly 13 years, when the 2nd respondent came into picture in the year 2020, a Complaint has been given to the respondent Police as if, a fraudulent document has been executed by the 1st petitioner in favour of the 2nd respondent. On the face of it, such an allegation is unsustainable. If according to the 2nd respondent, the 1st petitioner does not have even a semblance of right over the property in Survey No.45/1D and 345/1E, the 2nd respondent has to necessarily workout the remedy only before the competent Civil Court and establish the right. The same cannot be attempted to be achieved by giving a police Complaint to the 1st respondent. The 1st respondent cannot get into



an enquiry to decide the right and the title over the subject property and that is not within the scope of investigation in Crime No.4 of 2022. If the 2nd respondent feels that the Settlement Deed executed by the 1st respondent in favour of the 2nd respondent on 7.2.2007 is non-est in the eye of law, that document has to be challenged before the competent Civil Court in the manner known to law. Without undertaking such an exercise, a criminal Complaint has been given and the same is now being investigated by the 1st respondent Police.

10. Even if the allegations made in the Complaint are taken as it is, no offence of forgery or cheating is made out against the petitioners. The continuation of the investigation by the 1st respondent Police will in fact lead to an abuse of process of law and a case which is purely Civil in nature is attempted to be given a criminal colour. In view of the same, the FIR registered by the 1st respondent Police is liable to be interfered by this Court. It is brought to the notice of this Court that the Settlement Deed that was executed by the 1st petitioner in favour of the 2nd petitioner has now been cancelled by the District Registrar. This development does not in any way help the continuation of the criminal investigation. Insofar as this development is concerned, it is once again a matter of establishing the right and title over the property and whichever party is aggrieved by the same, has to work out their remedy before the Competent Authority/Civil Court. Looking at the case from any angle, there is absolutely no criminality involved and the continuation of criminal prosecution is a clear abuse of process of law.



11. In the light of the above discussion, the FIR in Crime No.4 of 2022, pending on the file of the 1st respondent is hereby quashed and this criminal original petition stands allowed. It is made abundantly clear that the *inter se* right between the parties can be agitated before the appropriate forum and this order will not come in the way of both the parties and the Authority/Court which deals with the issue shall independently deal with the same on its own merits and in accordance with law. Consequently, connected Miscellaneous petition is closed.

09.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
KP

To

1. Inspector of Police
DCB Police Station
Krishnagiri.

2. Public Prosecutor
High Court
Madras.



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N. ANAND VENKATESH,, J.
KP

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