



Crl.O.P.No.25769 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2023

PRONOUNCED ON : 21.04.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

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1.Parimala Selvan

2.P.Amirtham

3.P.Udhayakumar

4.P.Ezhilan

5.P.Kabilan

6.P.Saravanan

7.P.Selvakumar

8.P.Gowthaman

9.P.Vigneshwaran

... Petitioners

Vs.

1.State Rep by
Inspector of Police,
CCB – Avadi.

2.Mary Monica

...Respondents

1/24



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PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to quash the First Information Report in Crime No.23 of 2022 on the file of the respondent Avadi - CCB Police.

For Petitioners : Mr.D.Selvam

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side) (R1)
: Mr.G.Saravanakumar (R2)

ORDER

This Criminal Original Petitions has been filed to quash the First Information Report in Crime No.23 of 2022, on the file of the first respondent Avadi - CCB Police.

2.FIR in crime No.23 of 2022 was registered on the basis of the complaint given by second respondent/defacto complainant against the petitioners for the offences under Sections 465, 467, 468, 471, 34 & 120B IPC by the Avadi CCB.

3.The allegations made in the FIR, in brief, are as follows.

The land in survey No.634, Vilangadupakkam village, Ponneri taluk, Tiruvallur district, originally belonged to Rukmani Ammal. She was granted



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patta in P.No.112 in respect of this property. Rukmani Ammal sold this property to Irudhayam through a registered sale deed dated 24.01.1990. From the said Irudhayam, second respondent purchased this property on 22.08.1991 through a registered sale deed. Patta was changed in her name in P.No.471. From the date of the purchase, she has been in possession and continuous enjoyment without any disturbance. Computer patta was also issued in 2011. Patta stood in her name till January 2021. She received a communication from the Tahsildar, Ponneri, dated 08.12.2016, stating that one Parimala Selvan had given a petition for cancelling the patta in her name in respect of the property in survey No.634. She appeared before the Tahsildar on 09.12.2020. She was asked to come the next day along with the documents relating to the property. On 18.12.2020, she visited with the documents in support of her claim. The Tahsildar did not receive the documents, but asked her to submit it before the E-Seva centre. Thereafter, she received a communication stating that patta in survey No.634 stood in her name was cancelled. The order of the Tahsildar, Ponneri, is apparently illegal and contrary to the documentary evidence and physical possession. She came to understand that patta was cancelled on the premise that there was UDR patta in respect of this property in favour of Perumal. Perumal obtained UDR patta in respect of this property by



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indulging in fabrication of documents and patta was granted to him in P.No.261. Thereafter, in the enquiry conducted, he admitted that Rukmani Ammal was the owner of the property in survey No.634 and therefore, patta in his name in P.No.261 was cancelled and patta was granted in respect of this property in favour of Ponnusamy. The property in the name of Ponnusamy, in survey Nos. 631, 632 & 633 had been sold to Perumal's wife Mahadevi, wherein, in the schedule of the sale deed, survey No.634 is shown as one of the boundaries, for which, MaryMonica is the owner, that is the second respondent. Cancellation of patta in the name of second respondent after more than 30 years of enjoyment without referring to the title deeds of second respondent is absolutely illegal. Petitioner/accused Parimala Selvan is an Advocate, who is trying to usurp the property by fabricating the documents. Therefore, the complaint was given. On that basis, FIR came to be registered.

4.Challenging the registration of FIR, the learned counsel for the petitioners/accused submitted that the properties in survey Nos.631, 632, 634 & 638 originally belonged to Ponnusamy son of Babu of Vilangadupakkam village. He offered to sell the property to Perumal, father of petitioner for



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proper sale consideration. He executed an irrevocable power of attorney deed in favour of Perumal and that was registered on 24.06.1985, on the file of the SRO, Ambattur. Since the entire sale consideration was paid, it becomes an irrevocable power of attorney deed for the reason that power of attorney deed is coupled with interest. Petitioners' father was in possession and enjoyment of the property in survey No.634, he was granted patta and his name is entered in a register to show that he is the owner in possession of the property. Revenue records also stand in his name. This fact is known to second respondent and her husband Susai manickam. All of a sudden, patta No.634 was transferred in favour of second respondent. First petitioner filed a petition before the Tahsildar on 09.11.2020, after conducting enquiry, Tahsildar cancelled the patta in favour of second respondent and then restored the patta in the name of Perumal. Petitioners have also filed a suit for declaration in O.S. No.388 of 2021, on the file of the Additional Principal District and Sessions Judge – IV, Ponneri and it is pending. W.P.No.27466 of 2021 was filed challenging the order passed by the Revenue Divisional Officer which set aside the order passed by the Tahsildar, Ponneri. In a parallel proceedings, the District Registrar passed an order in Na.Ka.No.10572/A5/2021, dated 28.02.2022, stating that the matter has to be



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decided only by a competent Civil Court. Against the said order, the Deputy Inspector General of Registration passed an order stating that partition deed executed among the petitioners in document No.1415 of 2021 is null and void. Petitioners filed W.P. No.19775 of 2022 to quash the order passed by the Deputy Inspector General of Registration. The District Revenue Officer passed an order dated 12.08.2022, in Na.Ka.No.5957/2021/A3, stating that the parties have to workout their remedy on the basis of the order to be passed in O.S.No.388 of 2021, W.M.P.No.28991 of 2022 in W.P.No.27466 of 2021 and W.P.No.3487 of 2021. Though there is a specific mention in the order passed by the Deputy Inspector General of Registration department that in the facts and circumstances of the case, it is not necessary to give police complaint, the impugned complaint was given on 22.08.2022, after the order passed by the District Revenue Officer, in Na.Ka.No.5957/2021/A3, dated 12.08.2022. The learned counsel for the petitioners further submitted that a civil dispute is sought to be converted as a criminal dispute only to harass the petitioners, which is impermissible. Thus, he prayed for the quashing of the FIR. In support of his submissions, he relied on the following judgments.

(1) R.Nagender Yadav Vs. The State of Telangana and Anr. reported in 2022 Live Law (SC) 1030.



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(2) Usha Chakraborty & Anr. Vs. State of West Bengal & Anr. reported in

WEB 2023 Live Law (SC) 67.

5.In response, the learned Government Advocate (Crl.Side) appearing for the first respondent submitted that despite sending notice to A1 to A9 through registered post for enquiry, no one appeared for enquiry. During the course of investigation, the investigation officer collected certain documents connected with the transaction concerning the disputed property. During the course of investigation, first accused is dead. Investigation is completed and final report is filed for the offences under Sections 465, 467, 468, 471 r/w 34 and 120 (B) IPC, on the file of the Principal District and Sessions Judge, Tiruvallur and it is yet to be taken on file. Therefore this petition cannot be entertained at all.

6.The learned counsel for the second respondent submitted that the disputed property originally belonged to one Rangasamy Reddy. Varadappa Mudaliar purchased this property from Rangasamy Reddy under document No.851/1897. Varadappa Mudaliar sold this property to Thulasiammal under document No.821/1940. Thulasiammal sold this property to Dhanalakshmi



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ammal under document No.1944/1943. Rukmani Ammal purchased this property under document No.677/1951. Rukmani Ammal sold this property to Irudhayam under document No.515/1990. Second respondent purchased this property from Irudhayam under document No.6415/1991. From the date of purchase, second respondent is in possession and enjoyment of this property. Patta stood transferred to her name and she paid kist to this property. The land acquired under the Land Acquisition Act was returned to Rukmani Ammal in 1996 – 1997. Even when Perumal was alive, there was a dispute between Perumal, second respondent and her husband in connection with this property. Compromise was reached in the presence of the panchayatars. Perumal had given a statement before the Revenue Authorities in connection with the enquiry conducted on the petition filed by second respondent in connection with the change of patta in her name in respect of the property in survey No.634 stating that the property in survey No.634 to an extent of 1acre belongs to Rukmani Ammal, Rukmani Ammal sold this property to Irudhayam and through Irudhayam, second respondent purchased this property. He also stated that patta in respect of this property in patta No.261 was entered in his name wrongly and he has no objection for changing the patta in respect of this property in favour of second respondent.



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Similar statement was said to have been given by the villagers. Thereafter, patta was also changed in the name of second respondent. Taking advantage of the fact that first petitioner is an Advocate, and his relatives are holding and wielding political power, first petitioner and other petitioners have wealed the documents and claim right in the property. They are making contradictory statements with regard to their rights. That is, at one point, they claim that the property is an ancestral property and at another point, they claim that the property was purchased. Partition deed was created by the petitioners and the suit was filed on the basis of the partition deed and these are done to usurp the properties. By taking steps to cancel the patta in the name of the second respondent, creating fabricated partition deed and filing of suit, petitioners have committed offences mentioned in the FIR. Investigation is now completed and therefore, prayer for quashment of FIR cannot be considered. Thus, the learned counsel for the second respondent prayed for dismissal of this petition.

7.From the facts narrated above, we have seen that second respondent claims right, title and possession in respect of the property in survey No.634 on the basis of her title deeds and revenue records. The claim of the



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petitioners is that the property originally belonged to Ponnusamy and he executed a power of attorney deed in favour of petitioners' father Perumal.

Power of attorney is coupled with interest for the reason that the entire sale consideration was paid. Perumal was granted patta under the UDR scheme and revenue records show that he is the owner of the disputed property. Originally patta in respect of survey No.634 stood in the name of Perumal in patta No.261. That was cancelled and changed in the name of the second respondent in Patta No.471. The change of the name of Perumal, led to several litigations between the parties before the Revenue Authorities, Writ Court and before the Civil Court. Second respondent produced the copies of the title deeds as narrated above in the name of Varadappa Mudaliar. Thulasiammal, Dhanalakshmi Ammal, Rukmani Ammal, Irudhayam and in her name. She has also produced the tax receipts from 1991 to 2023 in respect of this disputed property. Copy of the list of lands acquired under the Land Acquisition Act, in respect of the disputed land is also produced.

8.After the dispute started with regard to the rival claim of the property, on the petition given by the first petitioner Parimala Selvan, the Tahsildar Ponneri, passed an order in Na.Ka.No.2863/2020/A1 dated 20.01.2021



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cancelling the patta in the name of second respondent and restoring it in the name of Perumal as per the UDR records. The reason given is that there is a mention in the sale deed of Rukmani Ammal that she got this property through possession and there is no mention about the title deeds or revenue records. This order was challenged before this Court in W.P.No.3478 of 2021.

9.In the counter filed by the Tahsildar, it is stated that Rukmani Ammal was not the registered pattadar in the Updating Registry Scheme Accounts. The patta transferred in the name of second respondent on 10.10.1991 ought to have been ordered only after verifying the linked documents with the pattadar of the Updating Registry Scheme Accounts or after the thorough enquiry. That procedure was not adhered to. Therefore, patta transfer made on 10.10.1991 by the District Registrar is not correct and he is not a competent person to order patta transfer.

10.The Revenue Divisional Officer passed an order in Na.Ka.No.1353/2021/A4, dated 11.10.2021, against the order passed by Tahsildar, Ponneri, by setting aside his order and restoring the patta in respect of survey No.634 in the name of second respondent. The main reason stated



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is that the patta in respect of survey No.634 to an extent of 1acre was originally recorded in the name of Rukmani Ammal before the UDR scheme.

Thereafter, Rukmani Ammal sold to Irudhayam and Irudhayam sold to second respondent. Power of attorney executed by Ponnusamy in favour of Perumal was cancelled. Perumal has no right in the property. His name was wrongly entered in the UDR scheme in respect of the survey No.634. Thus, he ordered cancellation of patta in the name of Perumal and restored the name of second respondent in respect of survey No.634.

11.Meanwhile, petitioners have filed suit in O.S.No.388 of 2021, on the file of the Additional Principal District and Sessions Judge – IV, Ponneri, against the second respondent and others seeking the relief of declaration of title and for injunction along with the prayer for declaration that the sale deed executed by the third defendant in favour of the second defendant in Document No.515 of 1990 and second defendant in favour of the first defendant in document No.6415 of 1991 to be declared as null and void and not binding on the plaintiffs. Against the order passed by the Revenue Divisional Officer, dated 11.10.2021, petitioner Parimala Selvan filed W.P.No.3487 of 2021.



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12.Second respondent filed a complaint before the District Registrar for cancellation of document No.1451 of 2021. The District Registrar passed an order on 28.02.2022 stating that considering the facts and circumstances of the case, pendency of the proceedings, she has to approach the Civil Court for appropriate remedy. Against the said order, second respondent filed Appeal before the Deputy Inspector General of Registration, wherein, the order in R.O.C.No.1370/A1/2022, dated 15.07.2022, was passed stating that document No.1415 of 2021 was executed by the persons, who had no right in the property. Against the said order, petitioners filed W.P.No.19775 of 2022 and it is pending.

13.The District Revenue Officer passed an order dated 12.08.2022, in Na.Ka.No.5957/2021/A3, on the Appeal filed by Parimala Selvan. It was held that in view of the pendency of the Civil and Writ proceedings referred above, the parties are directed to seek their remedy on the basis of the orders to be passed by this Court.

14.Thus, it is seen from the sequence of events, proceedings of the Revenue Authorities, Writ Petitions filed before this Court and the Civil Suit



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filed, there is dispute with regard to the title in respect of the property in Survey No.634 between second respondent and petitioners. *Prima facie*, it appears that second respondent has better title to the disputed property because of her claim being supported by title deeds and revenue records. However, even from the documents produced by second respondent, it is seen that there is a dispute between second respondent and her husband on the one hand, Perumal, father of the petitioners on the other hand. On 13.03.1992, second respondent gave a complaint to Sub Inspector of Police, Redhills Police station alleging that she is the owner of 1acre of land in survey No.634 and that she divided the land into plots. Perumal had illegally trespassed the land removing the stones fixed for embarking the plots and thus, she sought action against Perumal. It appears that there was an agreement reached between Perumal and second respondent on 26.03.1992, wherein, it is agreed by the second respondent to pay a sum of Rs.6,000/- to Perumal for cultivating the lands. There was also an agreement to leave two feet space on the northern side of the land for taking water to the land of Mahadevi wife of Perumal.



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15.Susaimanickam had given a complaint to the police in 2006 alleging that Perumal had encroached his land including survey No.634. When he tried to measure the property with the help of a Surveyor, Perumal and his men prevented measuring of the land. This complaint to the police clearly shows that Perumal was in possession and enjoyment of the property in survey No.634.

16.It is claimed by the learned counsel for the second respondent that Perumal had given a written undertaking before the enquiry officer. Enquiry was conducted for the grant of patta that the disputed land which was originally belonged to Rukmani Ammal from her to Irudhayam and from him to second respondent Mary Monika and Mary monika is the owner of the land in survey No.634 to an extent of 1acre. Not only that, he admitted that this land was wrongly entered in his patta P.No.261 during the UDR scheme. He has no right or claim over this property and has no objection for granting patta in respect of this property to the second respondent.

17.It is true that xerox copy of the statement alleged to have been given by Perumal is produced before this Court. However, petitioners denied that



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Perumal had given such a statement. There is also copy filed to show that

Perumal was granted patta in respect of the property in survey No.634 in Patta No.261. His name is also entered in the 'A' register. There is also document filed to show that patta in the name of Perumal in respect of survey No.634 is cancelled and second respondent is given patta in respect of survey No.634. Copies of documents, power of attorney deed executed by Ponnusamy in favour of Perumal dated 24.06.1985 and the cancellation of this document through cancellation deed dated 12.09.1986 are also produced.

18.Though it is claimed by the petitioners that power of attorney deed dated 24.06.1985 is irrevocable power of attorney deed coupled with interest for the reason that entire sale consideration was paid by Perumal to Ponnusamy, there is no reference about the payment of entire sale consideration by Perumal to Ponnusamy in the power of attorney deed. Power of attorney deed was executed for the reason that Ponnusamy was not able to manage because of his illhealth and therefore, he gave power to Perumal for selling the land. Thereafter, he cancelled the power of attorney deed by revoking all the powers given in the power of attorney deed. The intention to revoke the power of attorney deed was intimated to Perumal



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through registered post and that was received by Perumal. Therefore, it is clear that power of attorney deed dated 24.06.1985 was cancelled.

19.As referred earlier, petitioners claim right in the property on the basis of the power of attorney deed executed by Ponnusamy and then the UDR patta, 'A' register in the name of Perumal in respect of the disputed property. There is no document filed by the petitioners to show that how did Ponnusamy claim ownership to this property. On the other hand, second respondent produced documents from 1897, tracing the title through the original owner till the time she purchased the property from the last owner Irudhayam. As indicated earlier, it appears that second respondent has got a better title and claim to the property in survey No.634.

20.It is evident that there was an issue with regard to grant of patta even during Perumal's time. Perumal's possession in respect of survey No.634 was admitted by second respondent and in fact, she agreed to pay Rs.6,000/- to Perumal for cultivating the lands. The only document that was executed among the petitioners is the partition deed dated 04.02.2021. Whether the execution of this documents can be considered illegal, requiring the



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registration of the criminal case is a moot point. From the judgment produced by the learned counsel for the petitioners ***R.Nagender Yadav Vs. The State of Telangana and Anr. reported in 2022 Live Law (SC) 1030***, it has to be seen whether the substance of the complaint of a civil nature given a cloak of criminality. In such a situation, if civil remedy is available and if it is in fact attached, the High Court should have quashed the criminal proceedings to prevent the abuse of process of Court. That will not come in the way of instituting appropriate proceedings in future, in case the Civil court comes to the conclusion that the disputed sale deed is forged. It was also made clear that the judgment shall not be cited as a precedent.

21.In the case of ***Usha Chakraborty & Anr. Vs. State of West Bengal & Anr. reported in 2023 Live Law (SC) 67***, it was observed that factual position would reveal that genesis for the purpose of criminal proceedings is the dispute involved is essentially a civil dispute. The respondents therein gave a cloak of criminal issue. Already respondent approached the Civil Court by instituting the suit and it is pending, in such circumstances, it was held that use of criminal proceedings as a weapon cannot be justified.



22.FIR in this case was registered for the offences under Sections 465, 467, 468, 471, 34 & 120B IPC by the Avadi CCB. Section 465 deals with punishment for forgery. Section 467 deals with Forgery of valuable security, will, etc. Section 468 deals with forgery for the purpose of cheating. Section 471 deals with using as genuine a forged document or electronic record. Sections 463 & 464 read as follows:

463. Forgery — *Whoever makes any false documents or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*

464. Making a false document — *A person is said to make a false document or false electronic record—*

First — Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixed any (electronic signature) on any electronic record;

(d) makes any mark denoting the execution of a document or



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*the authenticity of the (electronic signature),
with the intention of causing it to be believed that such
document or part of a document, electronic record or
(electronic signature) was made, signed, sealed executed,
transmitted or affixed by or by the authority of a person by
whom or by whose authority he knows that it was not made,
signed, sealed or executed, or affixed; or*

*Secondly— Who, without lawful authority, dishonestly or
fraudulently, by cancellation or otherwise, alters a document
or an electronic record in any material part thereof, after it
has been made, executed or affixed with (electronic
signature) either by himself or by any other person, whether
such person be living or dead at the time of such alteration;
or*

*Thirdly — Who dishonestly or fraudulently causes any person
to sign, seal, execute or alter a document or an electronic
record or to affix his (electronic signature) on any electronic
record knowing that such person by reason of unsoundness of
mind or intoxication cannot, or that by reason of deception
practised upon him, he does not know the contents of the
document or the electronic record or the nature of the
alteration.*



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23.A person can be prosecuted and punished for the offences of forgery only if he makes a false document under the circumstances detailed under Section 464 IPC. Here, in this case, petitioners had executed the partition deed dated 04.02.2021 amongst them. We have seen that already there is a dispute with regard to grant of patta in respect of survey No.634, even during the life time of Perumal, between Perumal and second respondent. Both are claiming right in respect of the same property. Therefore, in the said factual background, execution of partition deed among the petitioners cannot be considered as making a false document for the purpose of committing forgery. Therefore, this Court is of the considered view that the offence of fabrication of false document for the purpose of committing forgery is not made out against the petitioners and that be the case, there is no case for prosecuting the petitioners for the other offences as well.

24.We have seen that there are litigations initiated before the Revenue Authorities and Registration Authorities and the decisions of the Authorities are challenged before the Writ Court and the Writ petitions are pending. Civil Suit filed by the petitioners in O.S.No.388 of 2021, on the file of the



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Additional Principal District and Sessions Judge – IV, Ponneri, is also

pending. Issue between the parties can be resolved finally and conclusively only by the competent Civil Court. Issue between the parties appears primarily a civil dispute and second respondent has given a criminal colour to the civil dispute and gave a criminal complaint. Therefore, in the considered view of this Court, FIR registered on the basis of the complaint in Crime No.23 of 2022, for the offences under Sections 465, 467, 468, 471, 34 & 120B IPC by the Avadi CCB, cannot be maintained legally and therefore, it requires to be quashed and accordingly quashed.

25. Accordingly, this Criminal Original Petition is allowed.

Consequently, connected miscellaneous petitions, if any, is also closed.

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21.04.2023

Internet: Yes

Index: Yes/No

Speaking/Non speaking order



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To:

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- 1.The Inspector of Police,
CCB – Avadi.
- 2.The Public Prosecutor,
High Court of Madras.



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Pre-delivery Order in

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