



CRL.O.P.No.25638 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P.No.25638 of 2021

and

Crl.MP.No. 14239 of 2021

1.Soundarrajan

2.Kasthuri

..

Petitioners

Versus

G.Gnanasundaram

..

Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the complaint and summons issued to the petitioners in CC.No.81 of 2021 dated 30.11.2021 on the file of the District Munsif Cum Judicial Magistrate, Thirukalukundram, Chengelpet District, quash the same.

For Petitioners : Mr. M.L.Ramesh

For Respondent : Mr.M.Sankar



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ORDER

This Criminal Original Petition has been filed to call for the complaint and summons issued to the petitioners in CC.No.81 of 2021 dated 30.11.2021 on the file of the District Munsif Cum Judicial Magistrate, Thirukalukundram, Chengelpet District, quash the same.

2. The petitioners are arrayed as A1 and A3 in the private complaint given by the respondent. As per the case of the respondent the property situated at old Survey No.1/1, New Survey No.754/2, 754/3 and 754/4, 754/5 and 754/6 measuring an extent of 55 Cents situated at Lathur Firka, Koovathurpettai, Koovathur Village, Cheyyur Taluk, Chengalpet District originally belonged to one Ganapathy Gramani who is the father of the respondent herein. The said property is inherited by Ganapathy Gramani from his father Vellappa Gramani. The said Ganapathy Gramani had six sons namely Durai (died), Doss (died), Harikrishanan (died), Kuppusamy (died), Radhakrishnan (died) and Gananasundram (respondent) and daughters Valliammal and Karpagam. The legal heirs of the children of Ganapathy Gramani are the owners of the subject property. Out of 55 Cents the father of the Ganapathy Gramani by name Vellappa Gramani himself had sold 10 Cents in favour of one Munusamy Chettiar by virtue of a



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registered sale deed registered as Doc.No.641/1934. Hence the respondent

and the other legal heirs of the Ganapathy Gramani are entitled to the remaining 45 Cents. Even though the legal heirs of the Munusamy Chettiar are only entitled to 10 Cents, the accused 1 to 3 and one Kasthuri, who are the legal heirs of the deceased Munusamy Chettiar, created documents among themselves to the extent of 55 Cents, and on the strength of the above documents, they have also obtained a patta from Tahsildar in Pata Nos.257, 258 for the entire property measuring an extent of 55 Cents. During mutation of the revenue records no notice was given to the legal heirs of the Ganapathy Gramani including the respondent. On the strength of the above patta and other documents, the Accused 1 to 3 had started to encroach upon the properties of the respondent and others, measuring to an extent of 45 Cents. Hence the respondent had filed an Appeal before RDO , Madurantagam to cancel the above patta. But the same was not considered. He also filed a writ petition in WP.No.16920/2016 and got a direction against the RDO to dispose the Appeal No.26/2016, but the same was not obeyed. Hence a contempt notice has been served upon the RDO. In the mean while, the respondent has also filed a civil suit in OS.No.15/2016



praying for relief of declaration and permanent injunction in respect of 45 Cents belonging to him. Since the petitioners /A1 to A3 colluded between themselves and obtained a forged patta in the names of 1st and 2nd accused without the notice to the respondent and other legal heirs, they have committed the offences of cheating and forgery. The third accused continued to execute the sale deed in favour of 1st and 2nd accused for an extent excessive of his actual entitlement. They have also criminally trespassed into the property of the respondent and threatened him with dire consequences. On the above allegations a private complaint has been given under Sec.200 Cr.P.C and the same was taken on file in C.C.No.81/2021. After serving summons on A1 to A3, charges have been framed for the offences under Sections 108, 120(b), 406, 417, 420, 424, 447, and 506(ii) IPC.

3.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

4.Now the petitioners who are the accused in the above CC.No.81/2021 have filed this petition by submitting that a civil suit is given with a criminal colour. The learned counsel for the petitioner



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submitted that there is no forgery committed by the petitioners. In fact the alleged original patta standing in the names of Annamalai and the name of respondent in respect of the subject survey Numbers are all genuine documents. They contain the signature of the respective revenue authorities. In fact the said documents have been referred by the Revenue Divisional Officer in her Proceedings dated 13.08.2021; the respondent has also filed a civil suit against the petitioners and that has been admitted in his complaint itself. The petitioners have also filed a civil suit against the respondent in respect of the subject properties. A civil suit has been converted into criminal complaint by making a false complaint that the accused had tampered the government documents and created patta in their names. Since the dispute is purely civil in nature no criminal proceedings can be initiated. In respect of the above contention the learned counsel for the petitioner submitted that the judgment of the Hon'ble Supreme Court held in **Crl.A.No.1251/2011 dated 4.7.2011.[Joseph Salvaraj A. Vs. State of Gujarat & Ors.]**

5.The learned counsel for the respondent submitted that the petitioners had enriched themselves through wrongful gain on the strength



of a false patta created by them by giving false information to revenue authorities at the back of the respondent and other legal heirs of the Ganapathy gramani. Even though the civil suits are pending between the parties that will not absolve on the criminal liability on the part of the accused who had given false information to create documents like patta in their names. In respect of the above contention he relied on the judgment of the Hon'ble Supreme Court held in the case of **Ramesh Chandra Gupta Vs. State of U.P. & Ors.** reported in **2022 LiveLaw (SC) 993** and in the case of **Sundaram Finance Services Ltd. and another Vs. Grandtrust Finance Limited and others** in **Crl.OP.No.14455 of 1999.**

6.It is a specific case of the respondent that the subject property which totally measured 55 Cents comprising the survey numbers 754/2, 754/3, 754/4, 754/5 and 754/6 originally belonged to one Ganapathy Gramini. Even during the life time of Ganapathy Gramini, he is said to have sold an extent of 10 Cents in favour of Munusamy Chettiyar. According to the original ancestor who owned the subject property, had sold only 10 cents and remaining 45 cents were inherited by the respondent and other legal heirs of the Ganapathy Gramini. The petitioners/ A1 to A3 are the legal heirs



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of Munusamy Chettiyar in whose favour Ganapathy Gramini has sold an extent of 10 cents.

7. Now the grievance of the respondent and other legal heirs of Ganapathy Gramini is that A1 to A3 had colluded with their sister Kasthuri and created false document among themselves in respect of larger extent i.e. 55 Cents in the subject survey numbers and created a patta in the name of the husband of Kasthuri. While mutating patta in the name of Annamalai [husband of Kasthuri], no notice has been served upon the respondent or other legal heirs. The petitioners have acted with criminal design in order to create false patta in their names.

8. It might be true that the petitioners who are the legal heirs of Munusamy Chettiyar along with other legal heirs claim more extent in the subject survey number than what they are originally entitled to. But the patta referred by the respondent in his complaint is not a forged one. However the authenticity and correctness of the patta is always open to challenge depending upon the entitlement of the respective parties. In fact the parties have filed suits against each other by making their respectful claim in the subject property. The respondent who had rightly approached



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the civil Court and filed a suit had also filed a criminal complaint by alleging criminal intent on the part of the petitioners and that they had created a forged patta. The patta is not a forged one. The parties have to prove before the Civil Court, whether the entries in the patta are correct, on the basis of their respective title or enjoyment over the subject lands.

9. A criminal case has been given without impleading the government authorities as parties to the proceedings. It is not the case of the respondent that a government document like a patta had been tampered by the petitioners and thus it was forged. It is neither the contention of the respondent that the petitioners had created a revenue document by themselves without the involvement of the government authorities.

10. The grievance of the respondent is understandable that before effecting any change in the patta, notice was not given to the respondent and other legal heirs of the Kanapathy Gramini. On that score, he had rightly filed an Appeal in 26/2016, before the Revenue Divisional Officer by challenging the impugned patta and also got a direction from the High Court to dispose the same.



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11. The learned counsel for the respondent has submitted that the learned Magistrate has appreciated the prima facie case and then only taken cognizance, and so the petitioners have to participate in the trial and they are not entitled to challenge the proceedings under Sec.482 Cr.P.C. The judgment of the Hon'ble Supreme court held in the case of ***Ramesh Chandra Gupta (cited supra)*** is applicable to the facts of its own case. Since the dispute between the respondent and the petitioners are purely civil in nature, it is unnecessary to subject the petitioners to undergo the process of trial.

In the result, this criminal Original Petition stands **allowed**. The proceedings in CC.No.81 of 2021 dated 30.11.2021 pending on the file of the learned District Munsif cum Judicial Magistrate, Thirukalukundram, Chengelpet District is quashed. Consequently, connected miscellaneous petition is closed.

03.03.2023

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
Neutral : Yes/No

jrs



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R.N.MANJULA, J.,

jrs

To:

- 1.The District Munsif Cum Judicial Magistrate,
Thirukalukundram, Chengelpet District,
- 2.The Public Prosecutor,
High Court, Madras.

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