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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1004 of 2019
and CMP.No.6661 of 2019

Regina Fatima Marie Saint Jacques ..Petitioner

Vs.

E.Karpagam (Deceased)
1.C.Elumalai
2.E.Eganathan
3.E.Eganandhini ..Respondents

[R1 to R3 impleaded vide order dated 09.01.2023 passed in CMP.No.5197 of 2022]

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to strike off the impugned plaint filed in O.S.No.96 of 2018 on the file of the II Additional District and Sessions Judge, Puducherry, by allowing the civil revision petition.

For Petitioner : Mr.G.Prabakar

For Respondents
For R1 : (Died) steps taken

For R2 to 4 : Mr.C.Sivanesan

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ORDER

The civil revision petition has been filed to strike off the plaint filed in O.S.No.96 of 2018 on the file of the II Additional District and Sessions Judge, Puducherry.

2.The respondent (since deceased) is the plaintiff and the revision petitioner is the defendant in the suit filed by the respondent in O.S.No.96 of 2018 on the file of the II Additional District and Sessions Judge, Puducherry. The respondent filed a suit for declaration, recovery of possession, damages and permanent injunction in respect of the suit property.

3.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4.The case of the plaintiff is that the suit property was owned by the father of the defendant. The plaintiff and her husband approached the owner of the property, who happened to be a French national, to purchase the said property. Accordingly, he agreed to sell the same and he had given a Power of Attorney in favour of one Ms.Huqo Daxine of Puducherry on 07.10.2005, it was registered

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vide Doc.No.343 of 2005 in the office of the Sub-Registrar, Vanur, in respect of the suit property. Thereafter, the power holder executed a Sale Deed dated 28.02.2006 registered vide Doc.No.922 of 2006 in the office of Sub-Registrar, Puducherry, for a valid sale consideration. Thereafter, the plaintiff obtained patta and got the other records mutated in her name. Later, the original owner of the said property was murdered by some miscreants and as a result, FIR was registered as against the accused persons. In the said FIR, the plaintiff was also falsely implicated as an accused. After filing charge sheet, the same was taken cognizance by the trial Court in S.C.No.30 of 2011 on the file of the Court of Session, Puducherry. Thereafter, the proceedings was quashed by this Court in Crl.O.P.No.16374 of 2011 by an order dated 29.08.2011. The other accused persons were also duly acquitted by the Sessions Court, Puducherry, by a judgment dated 05.02.2014 in SC.No.30 of 2011.

5.The revision petitioner, who is said to be the daughter of the original owner of the suit property is a stranger to the respondent and after demise of her father, she came to India and participated in the funeral ceremony of her father. Further, she is also well aware that the plaintiff herein was arrayed as one of the accused in the above said SC.No.30 of 2011. At the time, she has not whispered

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anything about the alleged forgery of sale deed. In fact, after attending the funeral ceremony of her father she flew away to France and settled over there. Thereafter, with the connivance of police officials and with a view to grab the schedule mentioned property, which was purchased by the respondents by paying a valid sale consideration to her father, she lodged a complaint on 19.06.2017 before the Director General of Police. On the said complaint FIR was registered in Crime No.101 of 2017 for the offences punishable under Sections 420, 468, 471, 120(B), 392, 294(b), 427, 448, 324, 395, 506(ii) r/w Section 34 and 149 of IPC, on the file of the Inspector, Grand Bazaar Police Station, Puducherry, on the allegation that the Power of Attorney was fraudulently executed in favour of said Ms.Huqo Daxine and thereafter, the Sale Deed was executed in favour of the plaintiff.

6.Pending FIR, the revision petitioner and the police officials along with their respective advocates had forcibly taken the respondent herein to the office of the Sub-Registrar, Puducherry, and made to sign in the already prepared Deed of Cancellation of Sale Deed in respect of the suit schedule property and no consideration was paid to the respondent herein. It was forcibly executed by the respondent on 18.07.2017 registered vide Doc.No.9440 of 2017. The signature

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of the respondent has been obtained by coercion and force and it would be manifest that it was prepared without the knowledge of the respondent herein. Now, the charge sheet has been laid and it is pending in PRC.No.5 of 2018 on the file of the Judicial Magistrate – III, Puducherry, in which the respondent is arrayed as an accused along with other accused.

7.Further, in order to prove the forgery in respect of the Power of Attorney dated 07.10.2005 registered vide Doc.No.343 of 2005, the defendant never produced any iota of evidence to the effect. Therefore, the entire allegation made in the complaint are false and baseless. The revision petitioner also failed to question the Sale Deed from year 2009 to 2017 while she visited India. Therefore, the Deed of Cancellation of Sale Deed dated 07.07.2017 has been made by illegal means with severe lapse of procedures, by-passing the laws and by force and co-ercion. After registration of FIR, the respondent and her husband filed a petition for anticipatory bail before this Court in Crl.O.P.No.5312 of 2018 in which they had given an undertaking affidavit stating that “they will not reclaim the suit property in future”. It was executed only because of the Cancellation Deed dated 07.07.2017 executed by the respondent herein by force. Hence the respondent filed the suit for following reliefs;

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" a) that the Deed of Cancellation of Sale Deed dated 07.07.2017 executed by the plaintiff in favour of the defendant herein, registered as document No.9440 of 2018 on 18.07.2017 in the office of the Sub-Registrar, Puducherry, cancelled as the same was made to be executed by the plaintiff by coercion and threat under the guise of criminal prosecution.

b) directing the Defendant to vacate & handover the possession of Schedule of property in suit to this plaintiff as the condition when forcibly taken by the defendant and in consequence thereof,

c) to direct the Defendants to pay a sum of Rs.2,00,000/- per month as damages & compensation for use & occupation of schedule property in suit from the date of filing this Plaint (i.e., 28.06.2018) to until she vacating and handing over possession of suit property to Plaintiff,

d) to grant permanent restraining the defendant or her men, agents, subordinates and any other person from alienating the petition mentioned property pursuant to the deed of cancellation dated 07.07.2017 registered as document No.9440 of 2017 in the office of the Sub Registrar, Puducherry.

e) directing the defendants to pay the costs of

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this suit and

f) pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

8.The learned counsel for the respondent herein would submit that only after registration of FIR, she was forcibly evicted from the suit property. In fact, the respondent filed an undertaking affidavit before this Court without prejudice to her right to agitate before the appropriate Court. Mere execution of undertaking affidavit would not confer any title over the property in favour of the petitioner herein since the cancellation of Sale Deed was executed under coercion and compulsion. The Sale Deed was executed in favour of the respondent herein on receipt of a valid sale consideration by the original owner of the suit property.

9. He would further submit that in fact, the original owner of the property was alive when the Power of Attorney was duly executed by him and also when subsequently the Sale Deed was executed in favour of the respondent herein in the year 2006. Thereafter, he was murdered by miscreants and the case filed against the main accused itself ended in acquittal. The entire plaint cannot be struck off since it contains bundle of facts and laws and it has to be gone into in a

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full fledged trial. Further, the revision petitioner ought to have approached the Court below for rejection of plaint instead of approaching this Court under Article 227 of Constitution of India.

10.On perusal of records revealed that the suit property was owned by the father of the revision petitioner. While he was alive, a Sale Deed was executed in favour of the respondent herein through his Power of Attorney. The Power of Attorney was executed on 07.10.20005 in favour of Ms.Huqo Daxine registered vide Doc.No.343 of 2005. The power holder executed a registered Sale Deed dated 28.02.2006 in favour of the respondent herein registered vide Doc.No.922 of 2006. Thereafter, the original owner of the property was murdered in which the respondent and her husband were arrayed as accused. In the murder case, FIR was registered in Crime No.209 of 2006 for the offence under Section 302 of IPC. After completion of investigation, the Investigating Officer filed a final report and the same has been taken cognizance by the trial Court in S.C.No.30 of 2011. Pending the trial, the respondent herein filed a quash petition before this Court in Crl.O.P.No.16374 of 2011 and the same was allowed by an order dated 29.08.2011. That apart, the other accused persons were also acquitted by the trial Court, by a judgment dated 05.02.2014.

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11.The revision petitioner lodged a complaint and the same has been registered in Crime No.101 of 2017 for the offence under Sections 420, 468, 471, 120(B), 392, 294(b), 427, 448, 324, 395, 506(ii) r/w Section 34 and 149 of IPC against the respondent and her husband along with other accused persons. Pending investigation, the respondent herein filed a petition for anticipatory bail before this Court in Crl.O.P.No.5312 of 2018. The allegations in the FIR are that the respondent and other accused persons created forged documents for grabbing the suit property.

12.Admittedly, the revision petitioner is a French national and came to Chennai. Her father was a retired Military man from the French Government. After his retirement, he settled in Puducherry and he owned some properties including the suit property. While being so, he was brutally murdered on 29.09.2006 by the second respondent and his associates. In that regard a murder case was registered in Crime No.209 of 2006 against the respondent and her husband. At the time of death of her father, the revision petitioner was in France, and she came down to Puducherry and performed her father's funeral ceremony

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and left to France after locking the property. In the meanwhile, the respondent's husband and the power holder fabricated the Power of Attorney as if her father executed the said Power of Attorney and the same was registered vide Doc.No.922 of 2006 on 28.02.2006. Thereafter, the power holder executed a Sale Deed in respect of the suit property in favour of the respondent herein. In the murder case, when it was pending for trial, the respondent filed an application for anticipatory bail before this Court on the ground that she has nothing to do with the offence under Section 302 IPC and her husband had given a sum of Rs.5 lakhs to Destin and Huqo Daxin, the power holder, only as hand loan, in turn as security to the said loan, her husband had obtained Sale Deed registered vide Doc.No.922 of 2006 on 28.02.2006.

13.Based on the statement and also the confession statement of other accused persons, this Court quashed the proceedings as against the plaintiff. Thereafter, again the respondent herein and other accused persons attempted to alienate the suit property. In fact, the fifth accused in Crime No.101 of 2017 has broke open the lock of the suit property and had illegally trespassed into the suit property and had taken jewels and other articles. Hence the revision petitioner lodged a complaint and the same was registered in Crime No.101 of 2017.

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14.In order to settle the issues, the respondent herein voluntarily come down and executed the cancellation of Sale Deed in favour of the revision petitioner and the same was also registered vide Doc.No.9440 of 2017 on 18.07.2017. Pending investigation, she also filed a petition for anticipatory bail before this Court along with her husband in Crl.O.P.No.5312 of 2018 in which, she along with her husband filed an undertaking affidavit as follows;-

> *" 1. I am the 2nd petitioner herein and 3rd accused in the above Crime No.101 of 2017 and I am well acquainted with facts and circumstances of the case. I am filing this affidavit of undertaking for myself and also on behalf of my husband 1st petitioner herein and 2nd accused.*
>
> *2. I have filed the above Crl.O.P., seeking anticipatory bail for myself and for my husband accused No.2 in the event of arrest. I further submit that the intervenor/defacto complainant had alleged in Crl.M.P.No.9018 of 2018 in Crl.O.P.No.16727 of 2018, stating that we would not interfere with the peaceful and enjoyment of the land and property by the defacto complainant as directed by this Hon'ble Court in Crl.O.P.No.5312 of 2018.*
>
> *3. I further submit that I executed a cancellation deed on 07.07.2017 in favour of the*

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defacto complainant, in spite of that it was alleged that myself and my husband are disturbing the possession and enjoyment by her. Hence, sought an undertaking in this regard.

4. I further submit that in spite of investigation is over and charge sheet was filed on 21.02.2018 itself, the defacto complainant insisted an undertaking. Now to prove my bonafides and also my commitment to my sincerity I am filing this affidavit of undertaking that we will not interfere in the possession and enjoyment of the subject property without prejudice to may rights under law."

15.After considering the undertaking affidavit filed by her, this Court granted anticipatory bail, by an order dated 12.07.2018. While granting anticipatory bail, this Court recorded their undertaking affidavit that the respondent shall strictly abide by the terms of the undertaking affidavit. On the one hand she filed an undertaking affidavit before this Court and on other hand she filed a suit in O.S.No.96 of 2018 on the file of the II Additional District and Sessions Court, Puducherry for the above said reliefs. Therefore, it is nothing but a clear abuse of process of law and the plaint itself cannot be sustained. Though, the revision petitioner, without exhausting the remedy under Order VII Rule 1 of CPC, has approached this Court by way of this civil revision petition under

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Article 227 of Constitution of India. This Court can very well exercise its power under Article 227 of Constitution of India, when there is clear abuse of process of law. It is evident from the facts narrated above that the present suit is nothing but a clear abuse of process of law and it is liable to be struck off by this Court.

16.Accordingly, the civil revision petition stands allowed. The plaint in O.S.No.96 of 2018 is hereby struck off. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.01.2023
(2/2)

Speaking/Non-speaking order
Index : Yes/No
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To

1.The II Additional District and Sessions Court,
Puducherry.

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G.K.ILANTHIRAIYAN.J,

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