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CrI.O.P.(MD)Nos.6897 & 6953 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : **15.03.2023**

Delivered on : **24.04.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

CrI.O.P.(MD) No.6897 & 6953 of 2020

and

CrI.M.P.(MD)Nos. 3435 & 3461 of 2020

CrI.O.P.(MD) No.6897 of 2020

1.Hakkeem

2.Mohamed Ismail

... Petitioners/accused Nos.3 &4

Vs.

1.The State Rep. by

The Inspector of Police,

District Crime Branch,

Kanyakumari District.

(Crime No.7 of 2020)

... 1st Respondent/ Complainant

2.Sirajidheen

... 2nd Respondent/Defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the impugned F.I.R registered in Crime No.7 of 2020, dated 06.03.2020, on the file of the first respondent and to quash the same insofar as the petitioners are concerned.



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Crl.O.P.(MD)Nos.6897 & 6953 of 2020

For Petitioners : Mr.Parthasarathy, Senior Counsel
for Mr.M.Saravanan

For Respondents : Mr.M.Aasha
Government Advocate (Crl.Side)for R1

: Mr.A.Haja Mohideen for R2

Crl.O.P.(MD) No.6953 of 2020

1.Mohamed Akbar
2.Mohamed Rafeek ... Petitioners/accused Nos.1 &2
Vs.

1.The State Rep. by
The Inspector of Police,
District Crime Branch (ALGSC),
Kanyakumari District.
(Crime No.7 of 2020) ... 1st Respondent/ Complainant

2.Sirajidheen ... 2nd Respondent/Defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the impugned F.I.R registered in Crime No.7 of 2020, dated 06.03.2020, on the file of the first respondent and to quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.Parthasarathy, Senior Counsel
for Mr.M.Saravanan

For Respondents : Mr.M.Aasha
Government Advocate (Crl.Side)for R1

: Mr.A.Haja Mohideen for R2



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Crl.O.P.(MD)Nos.6897 & 6953 of 2020

COMMON ORDER

These petitions are filed to quash the F.I.R in Crime No.7 and 2020, on the file of the first respondent police.

2. The allegation against the petitioners is that 7 cents of land and a building bearing door No. 5 - 138A belonged to the Muslim Muhallam Palli, Kappuvilai, in Kanyakumari District A1, being the President of the said Muslim Muhallam Palli alienated the property to the District President of Jamiyyathu Ahlil Quran Val Hadhees (herein after referred as “J.A.Q.H.”), namely the second petitioner-A2 by executing a gift deed in Document No.365/17, dated 14.02.2017 at the Sub Registrar Office, Verkilambi. The petitioners in Crl.O.P.(MD)No. 6953 of 2020, who are A3 and A4, have signed the document as witnesses.

3.1. On the side of the petitioners, it is stated that J.A.Q.H is having its head quarters at Chennai and the same was registered as document No.105 /1989 under the Tamil Nadu Societies Registration Act. A2 is the District President of J.A.Q.H, in Kanyakumari District.



3.2. The property originally belonged to one M.Hameed, he came forward to donate the property in question to the Muslim Muhallam Palli, that is the Verkilambi Branch of J.A.Q.H.. Hence, a resolution was passed on 01.10.2013 and on 05.03.2014, the said Hamed executed a gift deed in document No.485/14 in favour of the President of Verkilambi Branch of J.A.Q.H., who is A1 in this case. It was mistakenly left to mention in the gift deed that Muslim Muhallam Palli was the Verkilambi Branch of J.A.Q.H.. The original owner -M.Hameed executed a letter. Based on the letter, dated 06.01.2017 from the original owner - Hameed, a resolution was passed and a gift deed was executed in favour of the President of the Muslim Muhallam Palli, that is the Verkilambi Branch of J.A.Q.H, namely, Mohamed Rabeek -A2 in the F.I.R.

3.3. As per the resolution, A1 executed the gift deed in favour of the District President and A3 and A4 signed the document as witnesses. No offence was made out as the Muslim Muhallam Palli, was functioning as the Verkilambi Branch of J.A.Q.H from the year 1992. The original owner came forward to denote the property to J.A.Q.H. Only in pursuance to the resolution dated 01.10.2013, the disputed document was executed. There was no dishonest or malafide intention on the part of the accused.



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3.4. The second respondent and his family were members in Muslim Muhallam Palli, they were removed from the membership due to their non-payment of Subscription. One of the brother of the second respondent filed a suit in O.S.No.83 of 2017 on the file of the Principal District Munsif, Padmanabhapuram, challenging the removal from the membership of Verkilambi Branch of J.A.Q.H. The second respondent's son and his brother have filed a suit in O.S.No.53 of 2017 on the file of the Principal District Munsif, Padmanabhapuram, challenging the election conducted in Verkilambi Branch of J.A.Q.H. The Verkilambi Branch of J.A.Q.H was maintaining a Pallivasal in the name of Masthirahman and a Ragmaniya Arabic School and the same was receiving rice from the District Administration at the subsidized rates for preparing Nonbu Kanchi.

4. The second respondent along with six others registered the Society in the name of Verkilambi Muslim Muhalam in the year 2019 and they applied for the supply of rice at subsidized price by misrepresentation. After due enquiry, the District Collector in the proceedings, in Voo2/41720/2019, dated 03.04.2020 rejected the claim of the second respondent. The Verkilambi Muslim Muhalam headed by A1



is the Verkilambi Branch of J.A.Q.H and hence, the execution of the document is not an offence.

5. On the side of the petitioners, it is further stated that the intention of the original donor was to execute a gift deed in favour of the Verkilambi Branch of J.A.Q.H and his intention was revealed through his letter. Since an objection was made in the Registrar office, to execute a rectification deed, a new document was executed. The respondent registered a new Society in the year 2019, which was registered as No. 1/2019, only family members of the defacto complainant were the members in the Society. They filed a suit for a prayer for recovery of possession and for declaration that the property belonged to that Society. The property which was settled in favour of the Branch of J.A.Q.H in the year 1993 cannot be declared as a property gifted to the Society registered in the year 2019. There was no legal entity for the Society at the time of execution of the original gift deed.

6. The intention of the original owner is to be fulfilled. It was the settler, who pointed out the mistake in the gift deed and he requested the same to be rectified. The disputed document is the subject matter of the civil suit, wherein, there is a prayer for declaring the document as null and void.



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7. On the side of the petitioners, it is stated that A3 and A4 were only witnesses. The word attesor was defined in Section 3 of the Indian Evidence Act and in Section 4 of transfer of property Act. The attestors need not know the contents of the document. It is sufficient that they witnessed the executor putting his signature in the document.

8. On the side of the respondents, it is stated that the property belonged to the Muslim Muharam Palli Society. The petitioners have no right to transfer the property in the name of J.A.Q.H. A1 received the property in the capacity of President of Muslim Muharam Palli. A2 is the President of J.A.Q.H, which is a separate Organization. A1 has no authority to execute a gift deed, the original gift deed was accepted by the Muslim Muhalam Palli and the Revenue documents were mutated in the name of Muslim Muhalam Palli. Panchayat receipt, marriage certificate were in the name of Muslim Muhalam Palli. Rice for preparatin of Nonbu Kanji was given in the name of Muslim Muhalam Palli.

9. On the side of the respondents, it is stated that the disputed gift deed was executed with a dishonest intention to grab the



property that belonged to Muslim Muhalam Palli. A1 and A2 have no locus standi to transfer the title and possession of the property. The Muslim Muhalam Palli was created 30 years ago. A1 and A2 have also admitted the same. It is wrong to state that Muslim Muhalam Palli was functioning as Verkilambi Branch of J.A.Q.H. No such document was available. The original donor did not give the property to the J.A.Q.H. The resolution dated 01.10.2013 reveals that there was no intention for the donor to denote the property to J.A.Q.H. A1 is having no independent right to decide or execute a gift deed, in favour of A2.

10. On the side of the respondents, it is stated that the fact that the property belonged to Muslim Muhalam Palli was not denied by A1 and A2. There is no bar for the devotees of Muslim Muhalam Palli to be a member of J.A.Q.H. Steps were taken challenging the proceedings of the District Collector regarding the rice for Nonbu Kanji and the proceeding is delayed, due to COVID situation. The subsequent resolution was a created one. A1 and A2 have committed criminal breach of trust and they misappropriated the property with a dishonest intention. Once a Wakf is complete, it is dedicated to god and the gift is not revokable.



11. On the side of the respondents, the following Judgments of this Court are cited:-

(i) ***2016-1-CTC-717 (Madurai Yagappanagar Muslim Jamaath Noorul-Hudha Jumma Pallivasal Society V. The Sub Registrar, Theppakulam)***

(ii) ***2009-1-Civil-L.J-694 (Fuaad Musvee and Hajee Ebrahim Sait Wakf V. M.Shuaib Musvee, M.Najm Musvee)***

A judgment of the Hon'ble Supreme Court reported in 2000-1-MLJ-21 (**Karnataka Board of Wakf V. Anjuman-E-Ismail Madris-Un-Niswan**) is cited and another judgment of the Hon'ble Supreme Court reported in ***2002-1-CTC-561 (Tamil Nadu Wakf Board V. Hathija Ammal (Dead))*** are cited.

12. On the side of the prosecution, it is stated that A1 has executed a gift deed on behalf of Muslim Muhalam Palli in favour of A2 who represent J.A.Q.H. The name of the two Societies are different. J.A.Q.H was registered as a Society in registration No.105/89. All the accused persons committed criminal conspiracy and that they executed the disputed gift deed and that they committed breach of trust.



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13. The contention of the petitioners is that the said Muslim Muhalam Palli was established as a Branch of District J.A.Q.H. and that the Muslim Muhalam Palli was not a registered Organization and it had no legal entity, at that time. The former President of the Verkilambi Branch of J.A.Q.H has donated the property. There was no other Masith in the village of Verkilambi, except the Branch of J.A.Q.H. The original owner of the property-Hameed gifted the property for the welfare of the Masith. Instead of mentioning the recipient as the Branch of J.A.Q.H., he has mentioned the same as Muslim Muhalam Palli, which was the name colloquially used at that time. The word “Muslim Muhalam Palli” means “the residential area of Muslims”.

14. Subsequently, the original owner of the property realised the mistake and he send a letter, denoting his intention to donate the property only in the name of J.A.Q.H. On the write intimation by the original donor, a resolution was passed. After the passing of the resolution, the disputed document was executed. R2 and some of his family members formed into a Society and they registered the same as Registration No. 1/2019, under the name and style of Muslim Muhalam Palli.



15. It is seen that J.A.Q.H was registered in the year 1986. The Muslim Muhalam Palli was registered in the year 2019. After the registration of the Muslim Muhalam Palli, the second respondent has registered a case against A1 and A2 and the suit in O.S.No.125 of 2021 was pending before the Sub Judge, Padmanabhapuram. Whether the Muslim Muhalam Palli was available at the time of execution of the original gift deed, whether the earlier Muslim Muhalam Palli is a Verkilambi Branch of J.A.Q.H, whether the original donor find out the mistake in the gift deed and had addressed to retransfer the property in the name of J.A.Q.H; whether the alleged resolution narrating his intention to transfer the property to the J.A.Q.H is a valid document; whether A1 is having the right to execute the disputed gift deed; whether A2 is having the *locus standi* to receive the gift; whether the attestors have any personal knowledge about the transaction; whether the Muslim Muhalam Palli registered in the year 2019, is having a *locus standi* to question the gift deed executed in the year 1993 are matters to be decided in the Civil case.

16. Since the matter in dispute is pending before the Civil Court, initiating another legal proceedings against the same person for the same set of action is unwarranted.



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R.THARANI. J.

Ls

17. In view of the same, these petitions are allowed and the F.I.R in Crime No.7 of 2020, on the file of the first respondent, is hereby quashed. Any observation made by this Court in this petition will not affect the civil proceedings. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes/No
Index : Yes/No
Ls

24.04.2023

To

1. The Inspector of Police,
District Crime Branch,
Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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