

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.R.C.(MD).No.224 of 2019

Rajarathinam

... Petitioner/Petitioner

Vs.

1.Durairaj

2.Pandiyarajan

3.Kaliappan

4.Surulinathan

5.Dheenathayalan

6.Karuppaiya

... Respondents/Respondents

PRAYER : Criminal Revision Petition filed under Section 397 of Criminal Procedure Code, to set aside the order made in Crl.M.P.No.126 of 2018 on the file of the learned Special Judicial Magistrate (FAC), Special Court for Exclusive Trial of Land Grabbing Cases, Madurai dated 08.01.2019 and allow this revision petition.

For Petitioner : Mr.R.Karunanidhi

For R-2, R-3 & : Mr.S.Sivaprakash
R-4

ORDER

This Criminal Revision Petition has been filed to set aside the order passed in Crl.M.P.No.126 of 2018 on the file of the learned Special Judicial Magistrate (FAC), Special Court for Exclusive Trial of Land Grabbing Cases, Madurai, dated 08.01.2019.

2. The contention of the petitioner is that he filed a petition before this Court in Crl.O.P.(MD).No.7214 of 2014 and based on the direction given by this Court, his complaint was registered in Crime No.66/2014 for the offences under Section 420, 465 and 468 IPC and thereafter, the said complaint was closed as 'mistake of fact'. The petitioner filed a protest petition before the Special Court and the same was also dismissed by the Trial Court. Thereafter, the petitioner filed a private complaint in Crl.M.P.No.126 of 2018 before the Special Court under Section 190 r/w 200 Cr.P.C and the same was also dismissed by the Trial Court. As against the order passed by the Special Court in Crl.M.P.No.126 of 2018 dated 08.01.2019, the present Criminal Revision Petition has been filed.

3. As per the complaint of the petitioner, the property situated in Survey Nos.352/2, 353/1, 354/3 and 352/4 was enjoyed by the petitioner as per the Will executed by his grandfather dated 28.11.2002. After the demise of his grandfather, the petitioner was in possession of the property. Thereafter, the respondents conspired and created a forged Will dated 26.12.2006 and thereby, the petitioner preferred a complaint as against the respondents.

4. Before the Trial Court, P.W.1 to P.W.4 were examined. On examination of witnesses, the Trial Court dismissed the complaint under Section 203 Cr.P.C by holding that the dispute narrated by the witnesses are about the sale of property and not established about which documents were forged.

5. The learned counsel for the petitioner would contend that already the deceased T.K.Rathinasamy executed a registered Will dated 28.11.2002 in favour of the petitioner. The first respondent had filed a suit in O.S.No.352/2009 as against the petitioner. In that suit, the execution of the aforesaid Will dated 28.11.2002 was admitted by the

first respondent and thereafter, the first respondent, namely, Durairaj, along with the other respondents hatched conspiracy and created a forged Will dated 26.12.2006. Thereafter, the petitioner also filed a suit in O.S.No.119/2016 on the file of the learned District Munsif, Nilakottai and the same was decreed in favour of the petitioner. The learned counsel for the petitioner submitted that as per the judgment and decree of the Trial Court, the Will executed by T.K.Rathinasamy in favour of the petitioner dated 28.11.2002 was a valid one and the Will created by the first respondent dated 26.12.2006 was not proved. But the Special Court failed to consider the aforesaid aspects and dismissed the complaint.

6. The learned counsel appearing for the respondents 2, 3 and 4 contended that based on the complaint given by the petitioner, the police have already registered the FIR in Crime No.66/2014 and the same was closed as 'mistake of fact' and thereafter, the petitioner filed a protest petition before the Special Court and the same was also dismissed. As against the dismissal order, no appeal has been filed by the petitioner. Per contra, the petitioner has filed a private complaint in Crl.M.P.No.126 of 2018 and the Trial Court has also correctly dismissed the petition,

since there was no evidence to constitute the offence and hence, without any material, the petition cannot be sustained.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents 2, 3 and 4 and perused the materials available on record.

8. It is an admitted fact that already civil suits were filed by both the parties against the main accused, namely, Durairaj, who is said to have created false and forged documents and he died pending the proceedings. The main allegations are against the said Durairaj and the respondents 2, 3 and 4 are the subsequent purchasers and they have no nexus with the aforesaid creation of Will and they only purchased the property based on the Will. The fifth respondent is the document writer and the sixth respondent is the notary public, who also attested the document.

9. Four witnesses were examined before the Trial Court. P.W.1, in his evidence, stated that in the year 2013, Durairaj created forged document and sold the property. P.W.2, in his evidence, had stated that

the deceased Rathinasamy executed a Will in favour of his grandson and not stated about any creation of forged documents. P.W.3 also, in his evidence, stated that in the year 2007, based on the forged documents, 10 persons came to the land and threatened to vacate the premises and no statement was made with regard to the creation of forged documents. P.W.4 in his evidence stated that they are enjoying the property and in the year 2013, Durairaj sold the property to one Pandiyarajan and the said Pandiyarajan made quarrel with the petitioner. Therefore, the statements made by the witnesses do not whisper about the alleged forgery of Will. The Trial Court, after considering the evidence produced on the side of the petitioner, correctly came to the conclusion that there is no evidence to establish as to which document is forged one and the statements of the witnesses only stated about the sale of the property. Therefore, this Court does not find any infirmity to interfere with the order of the Trial Court. Accordingly, this Criminal Revision Petition is dismissed.

08.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

The Special Judicial Magistrate (FAC),
Special Court for Exclusive Trial of
Land Grabbing Cases,
Madurai.

CrI.R.C.(MD).No.224 of 2019

P. DHANABAL,J.

Lm

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