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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23/02/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.RC(MD)No.1005 of 2022

J.Asaithambi : Petitioner/De-facto
Complainant

Vs.

1.J.Udhayakumar : R1/Accused

2.The Inspector of Police,
District Crime Branch,
Madurai. : R2/Complainant

Prayer:- This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code, to call for the records of the impugned order, dated 01/08/2022 passed by the Judicial Magistrate No.1, Madurai, in Cr1.M.P No.1924 of 2022 and set aside the same.

For Petitioner : Mr.L.Georege Paul Anto

For 1st Respondent : Mr.J.Barathan

For 2nd Respondent : Mr.M.Sakthikumar
Government Advocate
(Criminal side)

**ORDER**

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This criminal revision has been filed to set aside the order, dated 01/08/2022 passed by the Judicial Magistrate No.1, Madurai, in Cr.M.P No.1924 of 2022.

2.The facts in brief:-

The petitioner and the 1st respondent are brothers. The son of the petitioner by name Senthil Pandian died on 05/12/2016 in a road accident and his wife also died, on 07/11/2019. The father of the petitioner namely Jayarajan executed a Will, on 29/09/2005 in favour of the petitioner and the 1st respondent jointly. The father also died, on 27/11/2006. The Will came into effect and the petitioner and the 1st respondent become the owners of the properties and they are in enjoyment. Taking advantage of the possession of the petitioner, the 1st respondent approached him to sell his share for Rs.1,50,00,000/-. A portion of the sale consideration namely Rs.75,00,000/- was paid. He also obtained his signature in stamp papers and the remaining balance amount was agreed to be paid after the execution of the sale deed. In stead of registering as sale deed, it was registered as gift settlement deed. He also agreed



document, the trial court stated that it is barred under section 92 of the Indian Evidence Act, which reads as under:-

"92.Exclusion of evidence of oral agreement. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from its terms;-

Proviso (1).-Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1[want or failure] of consideration, or mistake in fact or law.

Proviso (2).-The existence of



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any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually



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annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.”

7.Now, whether the above said facts and circumstances of the case will make out a prima facie criminal case to proceed.

8.The learned Government Advocate (Criminal side) was required to produce the enquiry file, which was undertaken on the basis of the complaint given by the petitioner. He has also produced the enquiry file in C.No.R3/27355/431/2022, dated 27/06/2022.

9.Perusal of the above file, it is seen that during the course of enquiry, both parties appeared and the 1st respondent has given a statement that it is purely a civil dispute and he will work out his remedy through



civil process. The Enquiry Officer has also passed an order stating that since because it is a civil issue, further action was dropped. The very same finding has been rendered by the trial court also. So the petitioner has to work out his remedy through civil process. Since it is a registered document, the nature and the contents must be properly disproved by the petitioner in the civil process. Absolutely, no criminality is involved. So, I find no reason to differ from the view that has been taken by the trial court.

10.In the result, this criminal revision is **dismissed.**

23/02/2023

Index:Yes/No
Internet:Yes/No
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To,

1.The Judicial Magistrate No.1,
Madurai.

2.The Inspector of Police,



WEB COPY District Crime Branch,
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G . ILANGO VAN , J

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