



Crl.R.C.(MD)No.492 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.492 of 2017

Siddhi Nayeema

...Petitioner/petitioner

Vs.

1.Aabitha

2.Ahamed Abrar

3.Ajim

...Respondents/Respondents

PRAYER : This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records from the Lower Court and to set aside the order passed in Cr.M.P.No.1936 of 2017 dated 17.03.2017 on the file of the learned Judicial Magistrate, Pattukkottai, Thanjavur District by allowing this revision.

For Petitioner : Mr.V.Balaji

For Respondents : Mr.D.S.Haroon Rasheed (for R1)

Mr.V.K.Vijayaraghavan (for R2 &R3)



ORDER

WEB COPY

This revision has been filed as against the order of dismissal thereby dismissing the petition filed by the petitioner under Section 190(1) of the Code of Criminal Procedure.

2. The learned counsel appearing for the petitioner would submit that the petitioner had two sisters and two brothers. Her elder sister is Siddhi Ayisha, younger sister is Ummal Abiya and her two younger brothers are Ahamad Thambi and Abulhasansathuli. By way of partition deed dated 13.06.1966, the petitioner, her siblings and their mother were entitled to the property comprised in Survey No.259/2A, the land measuring to an extent of 4398 sq.ft and some properties. The petitioner, her siblings and their mother had executed a release deed dated 16.02.1978 in favour of her elder sister viz., Siddhi Ayisha in respect of the property in Survey No.259/2A as per Muslim customs. The aforesaid Siddhi Ayisha died intestate on 07.07.2002 leaving her husband, namely S.A.M.Faruk and they had no issues. Thereafter, except the petitioner, her siblings and their mother were dead. Therefore, the petitioner and her sister's husband, namely, S.A.M.Faruk were entitled to half share each in the property of Siddhi Ayisha, who died intestate on 07.07.2002.



Thereafter, the said S.A.M.Faruk also died on 03.06.2014 leaving behind the petitioner alone as the sole legal heir to succeed intestate property of her deceased sister, Siddi Ayisha.

3. The learned counsel appearing for the petitioner would further submit that now, the petitioner is in possession and enjoyment of the subject property. While that being so, the first respondent herein claiming herself as the second wife of said S.A.M.Faruk, fabricated the document as the gift settlement deed dated 07.04.2006 executed by the deceased S.A.M.Faruk in her favour in collusion with respondents 2 and 3 herein, who are none other than the sons of the petitioner's brother. The petitioner also came to understand that the first respondent herein created an unregistered release deed dated 16.04.2004, which was said to have executed by the petitioner and her son and daughter in respect of the property in S.No.259/2A and the land as well as her sister's share of M/s.Sams Sea Food Company at Chennai by receiving a sum of Rs.3,00,000/- by way of cheque. The respondents 2 and 3 has no right title over the property, since the petitioner's deceased sister, namely Siddhi Ayisha died on 07.07.2002 and the father of the respondents 2 and 3 died on 18.03.1994. The respondents created fraudulent release deed dated 26.05.2014 executed by the third respondent herein in favour of the



second respondent in order to defeat the lawful right of the petitioner.

Therefore, she lodged a complaint before the District Crime Branch.

However, it was not taken on file. Hence, she was constrained to file a complaint before the Superintendent of Police, Thanjavur, on 25.09.2016.

Even thereafter, no steps have been taken and as such, she lodged a complaint before the Judicial Magistrate, Pattukkottai, Thanjavur.

4. The learned counsel for the first respondent would submit that one of the sisters of the petitioner herein namely Siddhi Ayisha died left behind her husband, S.A.M.Faruq and subsequently, he married the first respondent. Thereafter, the petitioner released her right and claim over the subject property by release deed dated 16.04.2004 for consideration of Rs.2 Lakhs. The entire consideration was paid by the first respondent to the petitioner herein vide Cheque No.233224 in the name of her son, cheque bearing No.233225 in favour of her and another cheque No. 233226 in the name of her daughter dated 16.04.2004 all drawn on the Dhanalakshmi Bank, George Town Branch. The amount was realized by the petitioner on 25.01.2007 as per bank records. Therefore, the petitioner being sister of the first wife of S.A.M.Faruk, had no title over the property.



5. As far as the respondents 2 and 3 herein, they are the sons of Late.Abulhasan Sadhuli, who is none other than the brother of petitioner herein. They entered into the release deed dated 26.05.2014 and as per the release deed, the third respondent gave relinquishment of his interest in the subject property in favour of the second respondent.

6. In fact, the first respondent herein raised an issue with regard to the release deed dated 26.05.2014 executed by the third respondent in favour of the second respondent by way of writ petition before this Court in W.P.(MD)No.6378 of 2015. In the said writ petition, a direction was issued to the concerned District Registrar to conduct an enquiry with regard to the issue. However, there was compromise entered between them by way of Declaration Deed, dated 04.09.2013 and accordingly, they gave up their interest in the subject property in favour of the first respondent herein. That apart, the petitioner already filed a suit for declaration in respect of the subject property, which is pending in O.S.No.65 of 2015 on the file of the Subordinate Court, Pudukkottai.

7. Considering the above facts and circumstances of the case, this Court finds that the issues were already considered by the civil Court and as such, the learned Magistrate has rightly dismissed the complaint and



Crl.R.C.(MD)No.492 of 2017

this Court finds no infirmity or illegality in the orders passed by the learned Judicial Magistrate, Pattukottai, Thanjavur District in Cr.M.P.No. 1936 of 2017 dated 17.03.2017. Accordingly, this Criminal Revision Petition is **dismissed**. However, the learned Judge, Subordinate Court, Pudukkottai, is directed to dispose of the suit in O.S.No.65 of 2015 filed by the petitioner uninfluenced by any observations made by this Court.

28.03.2023

NCC : Yes/No

Index: Yes/No

rmk



Crl.R.C.(MD)No.492 of 2017

To

- 1.The Judicial Magistrate, Pattukkottai,
Thanjavur District.
- 2.The Subordinate Judge, Pudukkottai.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CrI.R.C.(MD)No.492 of 2017

G.K.ILANTHIRAIYAN , J.

rmk

CrI.R.C.(MD)No.492 of 2017

28.03.2023