



.Crl.RC.No.591 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 29.04.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No.591 of 2019

1. Manonamani
2. Maheswari
3. Ubavanan
4. Govindaraj
5. G.Sabarinathan
6. Srinivasan
7. Rajeswari
8. Dhanalakshmi
9. M.Narayanan

... Petitioners

Versus

State Rep. By
The Sub Inspector of Police,
Salem District Crime Branch Police Station,
Salem District.
(Cr.No.13/2009)

... Respondent

Criminal Revision filed under Section 397(1) and 401(1) of Cr.P.C., to set aside the Judgment dated 30.01.2019 passed by the learned III Additional Sessions Judge, Salem in C.A.No.76 of 2017, confirming the conviction and the sentence imposed on the Petitioner in C.C.No.151 of 2010 on the file of the learned Judicial Magistrate, Omalur by the Judgment dated 14.06.2017.

For Petitioners
For Respondent

: Mr.B.Vasudevan
: Mr.V.Meganathan
Government Advocate (Crl. Side)



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ORDER

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This Criminal Revision Case had been filed against the Judgment dated 30.01.2019 passed in Crl.A.No.76 of 2017 by the learned III Additional District and Sessions Judge, Salem dismissing the Appeal and confirming the Judgment of the learned Judicial Magistrate, Omalur in C.C.No.151 of 2010, dated 14.06.2017.

2. The brief facts, which are relevant for consideration of this Criminal Revision Case, are as follows:

3.1. The dispute is with regard to the agricultural land in S.No.80/4 of Ammanichikkanampatti Village within Omalur Taluk. The first Appellant before the learned III Additional District and Sessions Judge, is the first Accused before the learned Judicial Magistrate, Omalur. The first Accused is the mother of the second Accused. Third Accused is the son of the second Accused. Fifth and Sixth Accused are the sons of the fourth Accused. Accused 9 to 11 are the purchasers of the property, who had purchased the said land from the Accused 1 to 8. The Accused 1 to 8 had sold the agricultural land in S.No.80/4 an extent of 2 Acres in the said Village to one Thulasiammal through registered sale deed dated 25.01.1977 for Rs.8,000/- which was registered as Doc.No.63/1977 on the file of the Sub Registrar, Omalur. After



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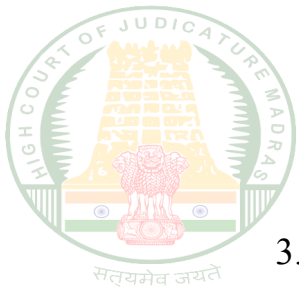
purchase, the Purchaser/Thulasiammal enjoyed the property. The purchaser died in the year 1994 leaving behind her only daughter Devaki. Devaki had been enjoying the said property. The said Devaki, during her lifetime had mortgaged the two Acres of land with Thathiyamappatti Co-operative Society for agricultural loan. The daughter of Thulasiammal, Devaki died on 12.01.2005 leaving behind her husband, sons and daughter as legal heirs. After the death of Devaki, daughter of Thulasiammal, Devaki's husband, sons and daughter had partitioned the property on 13.06.2008 by executing the partition deed which was also registered with the Sub Registrar, Omalur, thereby each getting share of 0.40 cents out of two Acres. The father/husband of Devaki was given Rs.10,000/- towards his share. The children and husband of Devaki get a share of 0.40 cents out of two Acres. The children of Devaki had been enjoying the property subsequent to the partition deed dated 30.06.2008. On 11.09.2008, the sons and daughters of Devaki had created the pathway measuring $1\frac{3}{4}$ cents on request of one adjacent land owner for the use of all the sharers. While so, the Accused 1 to 8 before the learned Judicial Magistrate, Omalur had sold the properties to Accused 9 through registered sale deed dated 03.10.2008 an extent of 1.98 cents in which the Accused 10 and 11 were signatories as witnesses, thereby causing loss to owners of the land. On 03.10.2008, the Accused 1 to 9 had created the forged documents in



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Ammanichikkanampatti Village, Omalur Taluk, thereby they entered into a conspiracy to create the fraudulent deeds and usurp the property enjoyed by Thulasiammal from the year 1977 and later by her daughter Devaki and her children. Therefore, the Accused 1 to 11 had committed the offences under Sections 120 (b), 465, 468 r/w. 120 (b), 420 r/w. 511 of IPC. The son of Devaki had preferred the Complaint with the District Crime Branch based on which the District Crime Branch, Salem had registered the case against the Accused 1 to 9. After the completion of the investigation, the Investigation Officer laid the final report before the Court of the learned Judicial Magistrate against Accused 1 to 11.

3.2. The learned Judicial Magistrate, Omalur had taken cognizance of the offences and taken the final report laid by the Inspector of Police, District Crime Branch, Salem as C.C.No.151 of 2010 and issued summons to the Accused. On appearance of the Accused 1 to 11, the copies were furnished under Section 207 Cr.P.C. After hearing the arguments of the learned Assistant Public Prosecutor and the learned Counsel for the Accused, the learned Judicial Magistrate, Omalur had framed Charges. Since Accused 1 to 11 denied the Charges, the learned Judicial Magistrate had ordered trial.



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3.3. During the trial, the Prosecution had examined 13 witnesses as P.W-1 to P.W-13 and marked 23 documents as Ex.P-1 to Ex.P-23. After closing the Prosecution Witnesses, Accused were questioned under Section 313 of Cr.P.C., regarding incriminating evidence available against the Accused. The Accused denied the incriminating evidence against them. Thereafter, the case was posted for defence witnesses. The Accused had not let in evidence. The Accused had marked documents Ex.D-1 to Ex.D-12 during the cross-examination of the Prosecution Witnesses, the Court documents were marked as Ex.C-1 to Ex.C-4.

3.4. After completion of the Prosecution evidence and after hearing the arguments of the learned Assistant Public Prosecutor and the learned Counsel for the Accused, the learned Judicial Magistrate, Omalur had by Judgment dated 14.06.2017 in C.C.No.151 of 2010 convicted the Accused Accused 1 to 11 for the offences under Sections 120(b), 465, 468, 471, 420 r/w. Section 34 of IPC. For the offence under Section 120 (b) of IPC, Accused 1 to 11 were sentenced to undergo two years Imprisonment. For the offence under Section 465 of IPC the Accused were sentenced to undergo one year Imprisonment. For the offence under Section 468 of IPC the Accused were sentenced to undergo three years Imprisonment and to pay a fine of Rs.2,000/-



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each, in default, to undergo two months Imprisonment. For the offence under Section 471 of IPC the Accused were sentenced to undergo one year Imprisonment and to pay a fine of Rs.2,000/- each, in default, to undergo two months Imprisonment. For the offence under Section 420 of IPC, the Accused were sentenced to undergo 3 months Imprisonment and to pay a fine of Rs.2,000/- each, in default, to undergo two months Imprisonment. In the Appeal, the learned Sessions Judge, Salem, had confirmed the Judgment of the learned Judicial Magistrate, Omalur and dismissed the Criminal Appeal.

3.5. Aggrieved by the dismissal of the Appeal, this Criminal Revision Case had been filed by the Appellants in Crl.A.No.76 of 2017 before the learned III Additional Sessions Judge, Salem.

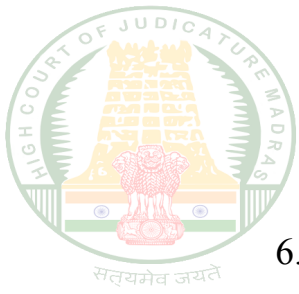
4. The learned Counsel for the Revision Petitioners submitted that the learned Judicial Magistrate, Omalur, failed to appreciate the evidence on the side of the defence during the examination of the Prosecution Witnesses which were marked as Ex.D-1 to Ex.D-23. Particularly, the origin of claim of title by the ancestor of first Accused claiming the title under Doc.No.2056/1939 and subsequently transferring the title under Doc.No.894/1941. Subsequent transfer under Doc.No.1812/1948 from



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Rathinammal to Pappammal. Ex.D-4 is the Encumbrance Certificate for the property from 1941 to 1966. Ex.D-5 is the Encumbrance Certificate for the property from 1967 to 1987. As per Ex.D-6, there had been Suit in O.S.No.298 of 2008 on the file of the learned District Munsif, Omalur between the Accused in this case and the Prosecution Witnesses. Ex.D-7 is the written statement filed by Deepa/Accused-9 in this case. Ex.D-8 is the Advocate Notice dated 14.07.2008. Ex.D-9 is the Encumbrance Certificate for the period from 01.01.1987 till 03.02.2008. Ex.D-10 is the Encumbrance Certificate from 01.01.1987 to 19.11.2010 in which the sale deed relied on by Accused 9 is referred. Ex.D-11 is the summon dated 24.11.2008 sent to the Accused. Ex.D-12 is the summon dated 21.09.2009 sent to Accused-1. The defence of the Accused is that the claim of the Prosecution Witnesses had not been reflected in the encumbrance. Therefore, the learned Judicial Magistrate, Omalur, failed to appreciate the evidence of the Prosecution Witnesses in the cross-examination and the Documents under Ex.P-1 to Ex.P-23.

5. The learned Judicial Magistrate, Omalur, ignored the materials available in the cross-examination and convicted the Accused based on the evidence of the Prosecution Witnesses in the examination-in-chief.

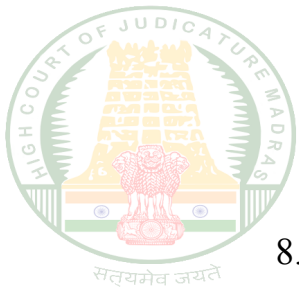


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6. The learned Appellate Judge, III Additional District and Sessions

Judge, Salem had failed to appreciate the materials available, the grounds of Appeal as well as the evidence before the learned Judicial Magistrate during the evidence of the Prosecution Witnesses viz., P.W-1 to P.W-13 and Ex.P-1 to Ex.P-23. In the cross-examination of the Prosecution Witnesses, the learned Appellate Judge had mechanically confirmed the Judgment of the learned Judicial Magistrate, Omalur in C.C.No.151 of 2010. As per the Judgment dated 30.01.2019, the evidence of P.W-10-Sub Registrar is contradictory to the Prosecution case. The Court document was also marked as Ex.C-1 to Ex.C-4. Ex.C-1 is the order passed by this Court in Crl.O.P.No.19538 of 2012, dated 22.08.2012 and 06.09.2012. Ex.C-2 is the legal opinion of the learned Public Prosecutor. Ex.C-3 is the communication from the Inspector of Police, District Crime Branch to the Deputy Superintendent of Police, District Crime Branch. Ex.C-4 is the CSR.

7. The learned Counsel for the Revision Petitioners invited the attention of this Court to the Charges framed by the learned Judicial Magistrate, Omalur and the Judgment of the learned Judicial Magistrate in which the evidence of the Prosecution Witnesses had been discussed.



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8. The learned Counsel for the Revision Petitioners also invited the attention of this Court to the grounds of Appeal and the Judgment of the learned III Additional District and Sessions Judge, Salem as per the charges framed by the learned Judicial Magistrate, Omalur, against Accused-1 to Accused-9 for the offences under Sections 120 (b), 465, 468, 471 r/w. 120 (b) and 420 r/w. 511 of IPC.

9. The charges framed against the Accused 10 and 11 for the offence under Sections 465, 468, 471 r/w. 120 (b) of IPC and 420 r/w. 511 of IPC. Actually, when the first Accused shifted her residence to Kumarapalayam had handed over the properties in the custody of Thulasiammal to look after the properties which was subsequently transferred by her in her name without the knowledge of first Accused in this case. This defence was proved in the evidence of the Prosecution witnesses but the learned Judicial Magistrate rejected the defence of the Accused and convicted the Accused. The Judgment of conviction recorded by the learned Judicial Magistrate, Omalur, is perverse as it is not on proper appreciation of evidence. Actually, the property belongs to Pappammal/mother-in-law of first Accused. Ex.A-1 is the Certified copy of the sale deed in the name of Pappammal. Therefore, the case of the Prosecution that Accused-1 to 8 are third parties to the property, will not hold



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good. Ex.P-22 is in the name of Pappammal and Accused-1 to 8 are the legal heirs of Krishna Chettiyar. Ex.D-4, Ex.D-5, Ex.D-9 and Ex.D-10 are the Encumbrance Certificate of the property. P.W-10 is the Sub Registrar who had registered the sale deed of the property handed over from Accused-9 by Accused-1 to 8. Accused-2 to 8 have not enjoyed the title deed to the property. The evidence of P.W-10 is against the case of the Prosecution which was not also considered by the learned Judicial Magistrate.

10. The learned Counsel for the Revision Petitioners filed typed set regarding the judgment of the suit filed by the legal heirs of Thulasiammal in O.S.No.593 of 2018 against the Accused seeking the relief of Declaration and Permanent injunction. Also, the Plaintiffs in O.S.No.593 of 2018 had filed another suit in O.S.No.99 of 2019 seeking permanent injunction against 1. Deepa, 2. The Village Administrative Officer, Chikkanampatty Village, Omalur Taluk, 3. The Tahsildar, Omalur and 4. The District Collector, Salem. Both the suits were tried together and by common judgment dated 23.12.2021, the learned Sub Judge, Sub Judge, Omalur, Salem District had decreed both the suits in favour of the Plaintiffs, the legal heirs of Thulasiammal. Therefore, on the basis of the judgment before the learned Sub Judge, Omalur, in favour of the Prosecution Witnesses/Plaintiffs, the learned Counsel for the Revision



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Petitioners sought amicable settlement to give a quietus to the criminal case.

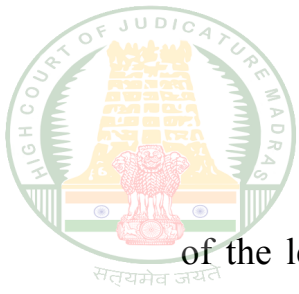
For which, he had relied on the judgment of the Hon'ble Supreme Court in the case of ***Ramgopal and another vs. The State of Madhya Pradesh*** in ***Crl.A.No.1489 of 2012*** and ***Krishnappa and others vs. State of Karnataka*** in ***Crl.A.No.1488 of 2012, dated 29.09.2021***.

11. The learned Counsel for the Revision Petitioners relied on the ruling reported in ***(2009) 8 SCC 751*** in the case of ***Mohammed Ibrahim and others Vs. State of Bihar*** wherein the Hon'ble Supreme Court had observed as under:

“D. Penal Code, 1860 – Ss. 415 and 24 – Cheating – Instances of – Person who make complaint against cheating – Sale of property by a person knowing that property did not belong to him – Held, seller defrauds purchaser – Purchaser is entitled to prosecute seller under S. 415 but a third party cannot do so.

F. Penal Code, 1860 – S.25 – Fraud – Meaning of – Criminal culpability for, when attracted – Held, fraud is neither defined in IPC nor has it been made an offence in IPC – However, certain specified acts when done fraudulently constitute offences (as in the cases of offences under Ss. 206 to 208, 210, 239, 240, 242, 243, 246 to 253, 255 to 261, 264 to 266, 415 to 424, 463 to 471, 474, 477 and 496 IPC) – It cannot therefore be assumed that a person committed an offence, merely by alleging or showing that he acted fraudulently, unless the fraudulent act is specifically made an offence under IPC or some other law – Contract Act, 1872 – S.17 – Fraud/Mala fides – When a criminal offence.”

12. The learned Government Advocate (Crl. Side) Mr.V.Meganathan appearing for the State, by way of reply vehemently objected to the submission



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of the learned Counsel for the Revision Petitioners that first Accused in this case herself had executed the sale deed registered in the year 1977 before the Sub Registrar, Omalur as Doc.No.63/1977. From the year 1977, the purchaser/Thulasiammal had been enjoying the property till her death in the year 1994. After her death, her only daughter Devaki enjoyed the property till her death in the year 2005. She had executed the mortgage in favour of Thathampatti Agricultural Co-operative Society for the purpose of agriculture. After the demise of Devaki on 12.01.2005, the sons and daughters had partitioned the property equally as 0.40 cents which is also under the registered deed. Therefore, suddenly the first Accused with her relatives viz., sons, daughters and grandchildren created a registered document in favour of Accused-9, it definitely attracts the offence under Sections 120 (b), 465, 468, 471 r/w. 120 (b) and 420 r/w. 511 of IPC. The submissions of the learned Counsel for the Revision Petitioners that the dispute is purely a civil dispute pending before the learned District Munsif cannot be a valid defence. The conduct of the Accused 1 to 11, by their evil designs, had made the purchaser, who had been continuously enjoying through her legal heirs from the year 1977, to lose their valuable property. The conduct of Accused 1 to 11 are borne out of documents which itself goes against their claim that first Accused who had sold the property through the registered sale deed in the year 1977



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cannot indulge in such activity after so many years. The learned Judicial Magistrate, Omalur had discussed all the relevant facts and the materials placed before the learned Judicial Magistrate through the evidence of the Prosecution Witnesses commencing from P.W-1 to P.W-13 in Paragraph Nos. 5 (1) to 5 (13) and had discussed the defence of the Accused and the Prosecution Witnesses from Paragraph No.10 onwards and had logically arrived at the conclusion that the sale deed in the name of Accused-9 executed by Accused-1 to 8 was sent for forensic examination regarding the thumb impression of first Accused along with the thumb impression found in the document executed by first Accused in the year 1977 and the forensic expert gave an opinion that the fingerprint, thumb impression is the same in the document in favour of Thulasiammal in the year 1977 and in the document executed in favour of Accused-9. Also, the learned Judicial Magistrate had clearly discussed the evidence of P.W-10-Sub Registrar regarding the Encumbrance Certificate under Ex.P-16 from 01.01.1976 to 31.12.1986 and Ex.P-17 which is also the Encumbrance Certificate from 01.01.1977 to 31.12.1984, the Sub Registrar had clearly stated that in Ex.P-16 since the four side boundaries were not specifically stated he was unable to give Encumbrance Certificate under Ex.P-16. Therefore, the learned Judicial Magistrate, Omalur, rejected the contention that the encumbrance had not been reflected regarding the property which was



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purchased by Thulasiammal in the year 1977. There is evidence by P.W-7, who is the Secretary of Thathiyampatti Agricultural Co-operative Bank. He had clearly stated that Devaki, W/o. Srinivasan has been a Member of Thathiyampatti Primary Agricultural Co-operative Bank since 1990, she had membership No.11807 and she had availed agricultural loan by executing mortgage in favour of the Bank regarding the property in S.No.80/4 in which Village Administrative Officer had issued possession certificate and last time on 22.10.2004 she borrowed a loan of Rs.33,000/- and he had claimed that the said loan was waived by the Government and he had furnished the relevant register maintained by Devaki under Ex.P-13. The defence of the Accused that Accused-1 had not at all sold the property, she had requested her relative Thulasiammal to take care of the property in her absence whereas Thulasiammal created documents as though Accused-1 sold the property to Thulasiammal. Therefore, the same is now pending as Civil dispute between the Prosecution Witnesses and the Accused before the learned District Munsif, Omalur, which was also discussed by the learned Judicial Magistrate in Paragraph No.18 onwards and had rightly arrived at a conclusion relying on the rulings cited by both parties in support of their rival contention and had concluded that the Accused had indulged in the offence alleged by the Prosecution. The learned Judicial Magistrate has also observed that as per



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Section 102 of the Indian Evidence Act, on whom burden of proof lies – The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side and had observed that the Prosecution was able to establish its case. The Accused had not entered the witness box and disproved the case of the Prosecution.

13. The learned Judicial Magistrate had discussed the defence documents also in the Judgment and had rejected the defence of the Accused that the first Accused had not at all sold the property. There is a clear evidence that the fingerprint of first Accused found in the year 1977 document and the last document, are the same.

14. The learned Government Advocate (Crl. Side) further submitted that the grounds raised in the Appeal by the learned Counsel for the Appellants were rejected by the learned III Additional District and Sessions Judge, Salem in a different plea taken by the Appellants/Accused that there had been two complaints and the evidence of the Investigation Officer in cross-examination that he was not aware of the civil dispute pending between the Accused and the Prosecution Witness will not come to the rescue of the Appellants. Also, a plea was raised by the Appellants that the civil dispute was converted into



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criminal dispute also had been rejected by the learned III Additional District and Sessions Judge, Salem, which clearly proved beyond reasonable doubt regarding the involvement of Accused-1 to 9 in creating false documents thereby the owners of the land losing their land without enjoying amounting to land grabbing by unlawful possession had been proved. Therefore, the learned Government Advocate (Crl. Side) sought for confirmation of the Judgment by the learned III Additional District and Sessions Judge and dismissing this Civil Revision Petition.

Point for consideration:

Whether the Judgment of dismissal dated 30.01.2019 made in C.A.No.76 of 2017 by the learned III Additional District and Sessions Judge, Salem confirming judgment dated 14.06.2017 made in C.C.No.151 of 2010, by the learned Judicial Magistrate, Omalur, is to be set aside as perverse?

15. Heard the learned Counsel for the Revision Petitioners and the learned Government Advocate (Crl. Side) for the State and perused the entire materials available before the learned Judicial Magistrate, Omalur and the entire materials available before the learned III Additional District and Sessions Judge, Salem.

16. This Court as Revision Court cannot re-appreciate the evidence as

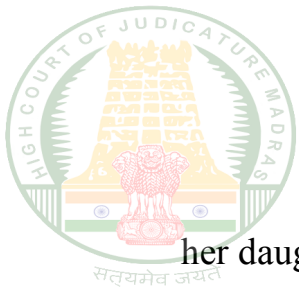


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that of an Appellate Court. Only when there is a technical plea, Revision Court can set right the same either in the judgment of the learned Judicial Magistrate or in the judgment of the learned III Additional District and Sessions Judge/Appellate Court.

17. On perusal of the Judgment of the learned Judicial Magistrate and on appreciation of evidence in the discussion in Paragraph Nos.5(1) to 5 (13) and the subsequent discussion on the defence of the Accused regarding the Civil dispute pending between the parties and the claim of the first Accused that she had not sold the property to Thulasiammal, she had requested her relative/Thulasiammal to take care of the property in her absence whereas Thulasiammal created documents will not hold good as there is evidence before the trial Court as discussed in Paragraph No.18 onwards.

18. As on the date of filing of the Complaint ie., 12.07.2009, P.W-1 had preferred the Complaint to the Superintendent of Police based on which Superintendent of Police, Salem had forwarded the Complaint to the Sub Inspector of Police, District Crime Branch. The Sub Inspector of Police had registered a case and investigated the case. As on the date of Complaint ie., 12.07.2009, the property was in continuous enjoyment of Thulasiammal and



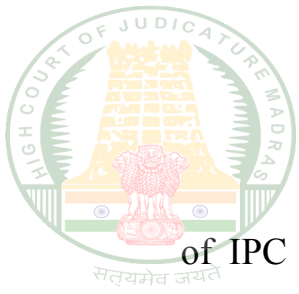
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her daughter and subsequently the grandchildren of Thulasiammal.

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19. The Complainant in this case had been enjoying continuously from the year 1977, more than 30 years. Therefore, the sale deed executed by Accused-1 to 8 in favour of Accused-9 is found to be not supported by the documents like Patta, Chitta, Adangal, etc., which are all in favour of the Prosecution Witnesses. The claim that the civil dispute is pending between the parties before the Civil Court will not hold good in this case ie., the valuable defence made out in the Criminal Revision case.

20. When the Criminal Revision case came up for hearing, on previous occasion, the learned Counsel for the Revision Petitioners took time to settle amicably but had not settled. The ruling relied on by the learned Counsel for the Revision Petitioners is also not acceptable in the facts and circumstances of this case. Here, the facts are different, the same person who had sold the property in the year 1977 and the alleged purchaser who enjoyed the properties from the year 1977 till the date of execution of subsequent sale deed for the same property by the same vendor, naturally attracts the Provisions of Sections 465, 468, 471, 420 of IPC. Apart from that, the seller and the purchaser have colluded. Therefore, conspiracy under Section 120 (b)



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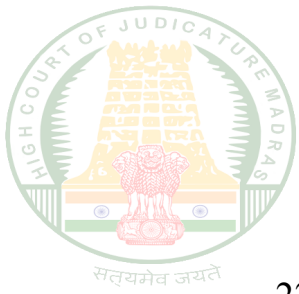
of IPC is attracted. Apart from the above, the learned Judicial Magistrate discussed the entire materials available before the learned Judicial Magistrate, is the case arising out of evidence attracting “white collar crime” based on the documents which are differed from other criminal cases. The defence of the Accused is that the civil dispute between the same parties before the Civil Court cannot at all be accepted. Considering the fact that the Revision Petitioners herein had sold the properties once again to a different party after having sold the property by the first Petitioner in the year 1977 in favour of Thulasiammal. After the death of Thulasiammal, the properties had been enjoyed by the legal heirs of Thulasiammal by name Devaki, the persons who do not have any claim over the property, had created documents. Therefore, the learned Judicial Magistrate having arrived at a proper conclusion based on the available materials and on proper appreciation of evidence, the Appellate Court has to necessarily uphold the Judgment of the learned Judicial Magistrate if it is on proper appreciation of evidence. As per the ruling of the Hon'ble Supreme Court, even if the same set of evidence, the learned Appellate Judge arrived at a different conclusion, still the Appellate Judge shall not disturb the finding recorded by the learned trial Judge if it is on the proper appreciation. The same principle was followed by the III Additional District and Sessions Judge, Salem by confirming the Judgment of the learned



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Judicial Magistrate, Omalur. The defence of the Accused that when the civil dispute between the parties is pending before the Court, the criminal case will not be maintainable was rejected by the learned Judicial Magistrate. The same was also rejected in Appeal by the learned Appellate Judge. Now the same point is raised in the Revision. It has been made clear before the trial Court that the person who sold the property in the year 1977 from Accused-1 now after 30 years, cannot recover the same, suppressing the earlier sale deed she had sold the same property to A-9 along with her children and grandchildren who are arrayed as Accused 2 to 8. Therefore, the rulings cited by the learned Counsel for the Revision Petitioners will not hold good. The conduct of Accused 1 to 9 had made the Prosecution Witnesses to approach the Court of the learned District Munsif seeking a declaration of title to the property. The conduct of the Accused attracts the offence under the Indian Penal Code.

21. The only point for consideration in this case is that in the defence of the Accused regarding the civil dispute between the same party before the Civil Court, the criminal proceedings are not maintainable. This has to be rejected in the light of the very same reported ruling relied on by the learned Counsel for the Revision Petitioners in **(2009) 8 SCC 751** in the case of ***Mohammed Ibrahim and Others Vs. State of Bihar and another.***



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22. This ruling also will not hold good as Accused-9 is not a person who had instituted the criminal complaint. The Complaint was instituted by the person who was cheated by the dishonest intention of Accused-1 to 11. Therefore, the same is maintainable, if above ruling is invoked in this case, it will result in the miscarriage of justice as persons/grandchildren of Thulasiammal and sons and daughters of Devaki. They will only believe that they had been using and enjoying the property from the year 1977 and had been grabbed from them and they were driven out from the property by the criminal intention of Accused-1 to 9 for having created documents without any claim. Apart from that, the person who had sold the property in the year 1977 herself as vendor had sold the very same property after thirty years with dishonest intention to cause loss of the property to the family of the purchaser of the property in the year 1977. Therefore, the purchaser alone prosecuting the seller will not be applicable to the facts of this case. If that is applied, based on the appreciation of evidence, the conclusion of the learned Judge has to be set aside which will result in miscarriage of justice by allowing the criminals to go scot-free indulging in very same offence in future, creating false documents. Apart from that if a person is said to be in possession, he is able to prove the possession. Here, the Village Administrative Officer was cited as witness and the Manager of Thathiyampatti Primary Agricultural Co-



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operative Bank was examined as Prosecution Witnesses. They had clearly deposited regarding the possession of the property by Thulasiammal and her legal heirs. Therefore, the claim of the vendor first Accused that she is the owner of the property making false representation and selling the property to Accused-9 had resulted in land grabbing. Therefore, the conduct of Accused-1 to 11 had resulted in the complaint. Also she had deprived their civil right over the property. Therefore, they were forced to approach the Civil Court seeking protection of the title over the property. Since they had filed Civil Suit, the Criminal complaint cannot be quashed. Apart from the above, the learned Judicial Magistrate had observed under Section 102 of the Indian Evidence Act, the Accused had not let in any evidence to disprove the Prosecution evidence. The offence, white-collar crime stands on a different yardstick. Here, the involvement of the Accused is borne out of documents. The burden is heavy on them to disprove their claim as in a case under Section 138 of the Negotiable Instruments Act. Here, the Accused had placed valid defence that first Accused did not sell the property in the year 1977, she had requested her relative Thulasiammal to take care of the property in her absence, whereas Thulasiammal created false document, that was falsified by the evidence of the fingerprint and handwriting expert before this Court who had stated that the signature of Manonmani and her fingerprint also the same.



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Manonmani herself did not enter the witness box. Therefore, the finding recorded by the learned Judicial Magistrate cannot be faulted. It cannot be considered as perverse, it is based on proper appreciation of evidence.

23. Similarly, the learned III Additional District and Sessions Judge, Salem, had rejected the grounds of appeal and the technical plea raised by the Accused as Appellants that FIR was delayed, there were two Complaints for the same offence, were rejected by the learned III Additional District and Sessions Judge, Salem.

24. As per the submission of the learned Counsel for the Revision Petitioners, the Prosecution Witnesses had admitted that Thulasiammal was a relative of first Accused and first Accused is residing in Kumarapalayam. The property sold to Thulasiammal was sold by the husband of first Accused/Krishnan Chettiyar, the Encumbrance Certificate was not reflected in the register of Sub Registrar in Ex.D-5. The same had been clearly explained by the Sub Registrar and also discussed by the learned Judicial Magistrate regarding the same in Paragraph No.24 and the defence of the Accused that the property was not sold by first Accused to Thulasiammal and also had been discussed by the learned Judicial Magistrate in Paragraph Nos.18 to 21



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wherein the learned Judicial Magistrate had observed on whom burden of proof lies to prove under Section 102 of Indian Evidence Act, the Accused had not entered the witness box to prove such contention. P.W-11 is the forensic expert who had given an opinion regarding the handwriting and fingerprint found on the sale deed in the year 1977 and the sale deed executed by Accused-1 to 8 in favour of Accused-9.

25. The contention of the learned Counsel for Accused-2 to 8 is that Accused-2 to 8 are not aware of the earlier sale deed and they were under the impression that the property is still with them. They are the residents of Kumarapalayam and they had sold the property under the *bona fide* impression that the encumbrance was not reflected in the records of Registrar concerned. This part of contention also cannot be accepted considering the facts and circumstances, the sale deed had been executed by first Accused along with Accused-2 to 8. First Accused along with her husband had sold the property in the year 1977, when Accused-2, Accused-7, Accused-4 and Accused-8 were minors, they were represented by first Accused as their guardian. The sale deed was executed by first Accused along with the husband of first Accused /Krishna Chettiyar in favour of Thulasiammal for a value of Rs.8,000/-.

Therefore, the contention is that Accused-2 to 8 were not aware of the earlier



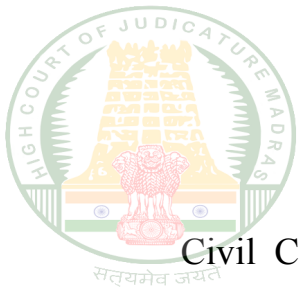
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sale deed and Accused-2 to 8 were under the *bona fide* impression that the sale was not reflected in the Encumbrance Certificate also cannot hold good considering the fact that P.W-10 is unable to mention the specific boundaries in the Encumbrance Certificate under Ex.P-16 and Ex.P-17, which cannot be exploited by the Accused. When they had obtained the Encumbrance Certificate without giving specific boundaries, they cannot make use of their own fault. There is evidence through the Secretary of Thathiyampatti Primary Agricultural Co-operative Bank and P.W-9-the Village Administrative Officer which had been discussed by the learned Judicial Magistrate. They had given evidence regarding the enjoyment of the property. While so, Accused-1 to 8 claiming to be owners itself is misrepresentation when the records stand in the name of the legal heirs of the deceased Thulasiammal through her grandchildren/Complainant herein. Therefore, the submission of the learned Counsel for the Revision Petitioners that the trial Judge as well as the learned Appellate Judge failed to appreciate the law and facts will not hold good. The learned trial Judge had discussed the entire materials including citations relied on by the Accused and rejected the contention of the Accused that the sale deed executed by Accused-1 to 8 in favour of Accused-9 was valuable document with proper title and they were under *bona fide* impression that A-9 was *bona fide* purchaser for valuable consideration was rejected by the learned



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Judicial Magistrate. Rightly so, it was upheld by the learned III Additional District and Sessions Judge. In short, this Court as a Revision Court cannot re-appreciate the evidence at the stage of revision. Even if the Appellate Authority arrives at a different conclusion other than the conclusion arrived by the learned trial Judge still the learned Appellate Court Judge shall not disturb the finding of the learned trial Judge. If the learned trial Judge had on proper appreciation of evidence as per the Indian Evidence Act arrived at a logical conclusion, such a finding cannot be disturbed due to the fact that the learned trial Judge had the advantage of observing the demeanour of the witnesses which advantage is not available to the Appellate Authority. Therefore, the Appellate Authority shall not disturb the finding recorded by the learned trial Judge. The learned Judicial Magistrate, on proper appreciation of evidence and the entire materials available before him, had arrived at a logical conclusion. The same cannot be held perverse. Similarly, the learned III Additional District and Sessions Judge/Appellate Court had confirmed the finding of the learned Judicial Magistrate, Omalur. When two Courts had on independent appreciation of evidence arrived at the same conclusion, the Revision Court shall not disturb the concurrent finding, despite that Civil case is pending, the criminal case arose out of the conduct of Accused 1 to 9 resulting in purchaser Thulasiammal and her grandchildren approaching the



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Civil Court to establish the title. That cannot be used as defence to their advantage, is the case of the Prosecution.

26. As per the decision of the Hon'ble Supreme Court in the case of ***Swaroopa Rani Vs. M.Hari Narayana reported in (2008) 5 SCC 765 : (2008) 3 SCC (Cri) 79***, wherein it was stated as follows:

“11. It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case”.

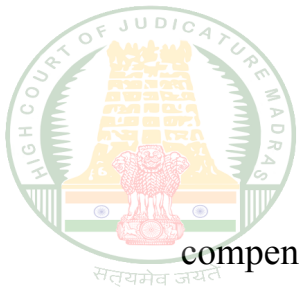
27. The learned Counsel for the Revision Petitioners filed typed set regarding the judgment of the suit filed by the legal heirs of Thulasiammal in O.S.No.593 of 2018 against the Accused seeking the relief of Declaration and Permanent injunction. Also, the Plaintiffs in O.S.No.593 of 2018 had filed another suit in O.S.No.99 of 2019 seeking permanent injunction against 1. Deepa, 2. The Village Administrative Officer, Chikkanampatty Village, Omalur Taluk, 3. The Tahsildar, Omalur and 4. The District Collector, Salem. Both the suits were tried together and by common judgment dated 23.12.2021, the learned Sub Judge, Omalur, Salem District had decreed both the suits in favour of the Plaintiffs, the legal heirs of Thulasiammal. The averments in the plaint in O.S.No.593 of 2018 is that after sale of the properties in the year 1977 to Thulasiammal by Manonmani, the Defendants in O.S.No.593 of 2018 are



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alleged to have created fraudulent sale deeds. Therefore, O.S.No.593 of 2018 was filed for declaration of title and for consequential permanent injunction. After full trial, the suit was decreed. The other suit in O.S.No.99 of 2019 was also decreed in favour of the Plaintiffs.

28. The learned Counsel for the Revision Petitioners on the basis of the judgment before the learned Sub Judge, Omalur, in favour of the Prosecution Witnesses/Plaintiffs, had sought amicable settlement to give a quietus to the criminal case. For which, he had relied the judgment of the Hon'ble Supreme Court in the case of ***Ramgopal and another vs. The State of Madhya Pradesh*** in ***Crl.A.No.1489 of 2012*** and ***Krishnappa and others vs. State of Karnataka*** in ***Crl.A.No.1488 of 2012, dated 29.09.2021***. The facts of the decision relied by the learned Counsel for the Revision Petitioners are different. As far as white collar crimes, there cannot be compounding of offences. The said ruling clearly states that cases involving corruption/vigilance cases cannot be compounded. Here it is a similar case of white collar crime committed against the innocent citizens misusing the sale deed over the properties which was already sold decades ago which is nothing but land grabbing. The valuable properties purchased with hard earned money and enjoyed by the property owners are lost, which cannot at all be



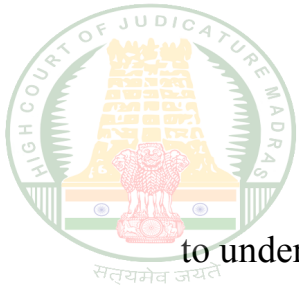
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compensated. Therefore, similar to vigilance cases, this case also cannot be compounded. The ruling cited by the learned Counsel for the Revision Petitioners is rejected.

29. In the light of the above discussion, the point for consideration is answered in favour of the Prosecution and against the Revision Petitioners. The Judgment of dismissal dated 30.01.2019 made in C.A.No.76 of 2017 by the learned III Additional District and Sessions Judge, Salem confirming judgment dated 14.06.2017 made in C.C.No.151 of 2010, by the learned Judicial Magistrate, Omalur, is found proper and the same is to be confirmed.

In the result, this ***Criminal Revision is dismissed.*** The Judgment of dismissal dated 30.01.2019 made in C.A.No.76 of 2017 by the learned III Additional District and Sessions Judge, Salem confirming judgment dated 14.06.2017 made in C.C.No.151 of 2010, by the learned Judicial Magistrate, Omalur, is confirmed.

The learned Judicial Magistrate is directed to issue warrant to the Accused and direct the Sub Inspector of Police, District Crime Branch to secure the Accused in C.C.No.151 of 2010 and to detain them in Prison so as



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to undergo the sentence of imprisonment.

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29.04.2024

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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To

1. The Judicial Magistrate,
Omalur
2. The III Additional Sessions Judge,
Salem
3. The Sub Inspector of Police,
Salem District Crime Branch Police Station,
Salem District.
4. The Public Prosecutor,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

At the time of pronouncing the order, the learned Counsel for the Revision Petitioners Thiru.B.Vasudevan filed a memo reporting the death of the first Petitioner/first Accused-1 K.Manonmani along with photostat copy of the Death Certificate of K.Manonmani who died on 28.12.2023. The memo filed by the learned Counsel for the Revision Petitioners is recorded. This Criminal Revision Case is dismissed as abated as against the first Petitioner/first Accused.

2. The learned Counsel for the Revision Petitioners seeks modification of sentence alone against the Revision Petitioners 2 to 10/ Accused-2 to Accused-8 and Accused-10.

3. On perusal of the judgment of the trial Court, it is found that the offences alleged in this case are under Sections 120(b), 465, 468, 471 and 420 of IPC.

4. As per the provisions of Indian Penal Code, for the offences under Sections 465 imprisonment of two years is attracted. For the offence under



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Section 468, imprisonment of 7 years is attracted. For offences under 471, imprisonment of three years is attracted. For the offences under 420 of IPC, imprisonment upto 7 years is attracted. Here, the learned Judicial Magistrate, Omalur had awarded only lesser sentence considering the offence alleged by the Prosecution against the Accused. Therefore, less than one year imprisonment cannot be considered in this case.

5. As per the sentence of imprisonment recorded by the learned Judicial Magistrate, Omalur, the Accused-1 to Accused-11 were awarded sentence of 2 years imprisonment for the offence under Section 120(b) of IPC; one year imprisonment for the offence under Section 465 of IPC; three years of imprisonment for the offence under Section 468 of IPC; one year imprisonment for the offence under Section 471 of IPC and only 3 months imprisonment for the offences under Section 420 of IPC.

6. Considering the fact that the alleged occurrence is of the year 03.10.2008, the judgment of the learned Judicial Magistrate, Omalur was pronounced on 14.06.2017, the appeal was dismissed on 30.01.2019 confirming the judgment of conviction recorded by the Judicial Magistrate, Omalur and also considering the passage of time, the period of sentence



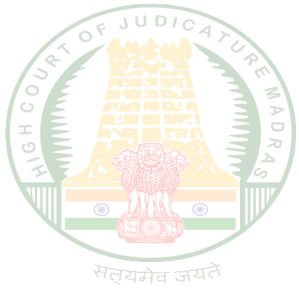
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imposed on the Accused-2 to 8 and 10 for the offence under Section 468 of IPC is reduced to one year of imprisonment and for the offence under Section 120(b), the sentence of imprisonment is reduced to one year. The Accused 2 to 8 and 10/Petitioner 2 to 10 are directed to surrender before the learned Judicial Magistrate, Omalur within two weeks from the date of uploading the copy of the order on this website of this Court.

7. The learned Judicial Magistrate, Omalur is directed to issue warrant of conviction in the light of the modified sentence of imprisonment as per the order of this Court. The period of detention already undergone by the Accused 2 to 8 and 10 shall be set off under Section 428 of Cr.P.C.

29.04.2024

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SATHI KUMAR SUKUMARA KURUP, J.

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Order made in
Crl.R.C.No.591 of 2019

29.04.2024