
(2014) 10 MAD CK 0033

In the Madras High Court

Case No : Crl. O.P. No. 4550 of 2014 and M.P. No. 1 of 2014

M.P. Venkidupathy

APPELLANT

Vs

Inspector of Police and Others

RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 120-B, 294(b), 420, 423, 467
Registration Act, 1908 — Section 82

Citation : (2015) 1 MLJ(Cri) 147

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : P.M. Duraiswamy, Advocates for the Appellant; C. Emalias, Additional Public Prosecutor, B. Kumar, Senior Counsel for S. Sithirai Anandam, Advocates for the Respondent

Judgement

C.T. Selvam, J.—Orders in this Criminal Original Petition have been reserved on 25.04.2014. As it was represented on behalf of respondents 2 to 5 that learned senior counsel Shri. B. Kumar wished to make a mention in the matter and that he was unable immediately to do so, the matter was listed under the caption "for being mentioned" on 30.06.2014, 22.08.2014 and again on 15.09.2014. On 15.09.2014, it was submitted that a counsel other than Shri. B. Kumar, learned senior counsel, wished to make a mention. Having elaborately heard the matter, this Court thought it appropriate to afford learned senior counsel, who earlier had addressed it, an opportunity, not again to make elaborate submissions, but to touch upon any issues which he may have felt left out or to be explained. Considering it not appropriate to permit other counsel to make submissions, this Court has refused permission to other counsel to address it. Petitioner, who is arrayed as A2 in case registered for offences under sections 120-B, 420, 423, 467, 468, 471, 294(b), 506(ii) IPC and 82 of Indian Registration Act, 1908, in Crime No. 32 of 2013, on 19.10.2013, on the file of the first respondent, seeks quash.

2. Heard learned counsel for petitioner, learned Additional Public Prosecutor and learned senior counsel for respondents 2 to 5.

3. The contention of the de facto complainant is as follows:

Pursuant to directions under section 156(3) Cr.P.C. by Special Court, Land Grabbing Cases, Tirupur, the case in Crime No. 32 of 2013 on the file of the first respondent came to be registered. The dispute between the de facto complainant and the accused is in respect of property in S.F. No. 273 of an extent of 11.10 acres at Karaipudur Village, Palladam Taluk, Tiruppur District. One Kuppanna Gounder, who was the original owner of the property in dispute, had four sons by name Periya Muthusamy, Palanisamy Gounder @ Palanisamy, Chinnathambi Gounder and Arunachala Gounder. Periya Muthusamy died as a bachelor. The other three sons inherited the property of Kuppanna Gounder as per the Re-settlement and Resurvey Register of the year 1913. The legal heirs of Palanisamy Gounder viz., P. Nachimuthu, P. Muthusamy, and P. Ramasamy jointly obtained title to the disputed property as part of their inheritance along with other ancestral properties. The said claim is made on the basis of the entry made in the Re-settlement and Resurvey Register of the year 1913, informing the disputed property as belonging to P. Nachimuthu and "two others" and on the presumption that the "two others" related to P. Muthusamy and P. Ramasamy, they along with P. Nachimuthu being sons of Palanisamy Gounder @ Palanisamy. The said persons jointly sold an 1/3rd interest in the disputed property i.e., an extent of 3.70 acres to their paternal uncle by name Arunachala Gounder through a registered sale deed dated 27.01.1915. The remaining extent of 7.40 acres had been in their possession and enjoyment through their life time and thereafter, the same was sold to respondents 2 to 5 (de facto complainant party) by then-legal heirs. It is contended that the legal heirs of Arunachala Gounder, being entitled only to 3.70 acres purchased by Arunachala Gounder under the sale deed dated 27.01.1915, wrongfully have sold an extent of 2.50 acres, 2.50 acres and 2.40 acres (totally 7.40 acres) to the petitioner, his father M.P. Ramasamy and one Eswaran under sale deeds dated 10.09.1990, 06.09.1990 and 02.09.1990 respectively. Though Chinnathambi Gounder, one of the sons of the original owner Kuppanna Gounder, did not derive any interest in the disputed property, his heirs sold an extent of 3.70 acres therein to the petitioner through sale deeds dated 27.07.1990 and 11.07.1996. Respondents 2 to 5 (de facto complainant party) had purchased 4.40 acres in the disputed property from the legal heirs of P. Nachimuthu, P. Muthusamy, and P. Ramasamy, through a sale deed dated 03.01.1995 and have since been in possession and enjoyment thereof. A case has been registered on accusations of the petitioner and Others disturbing their possession and enjoyment and of creating forged and fabricated sale deeds in respect of their property.

4. It is the contention of the petitioner and the other accused that each of the three sons of the original owner Kuppanna Gounder viz., Palanisamy Gounder @ Palanisamy, Chinnathambi Gounder and Arunachala Gounder inherited 1/3rd

interest in the property in S.F. No. 273 of an extent of 3.70 acres. The legal heirs of Palanisamy Gounder @ Palanisamy, viz., P. Nachimuthu, P. Muthusamy and P. Ramasamy sold their 1/3rd interest of 3.70 acres to their paternal uncle Arunachala Gounder through a registered sale deed dated 27.01.1915. Pursuant to such sale deed, Arunachala Gounder became entitled to an extent of 7.40 acres and the legal heirs of Palanisamy Gounder @ Palanisamy lost all interest in the property in S.F. No. 273 as a result of such sale. Petitioner, his father M.P. Ramasamy and one Eswaran, had purchased 2.50 acres, 2.50 acres and 2.40 acres under sale deeds dated 10.09.1990, 06.09.1990 and 02.09.1990 respectively from Arunachala Gounder. The legal heirs of Chinnathambi Gounder, one of the four sons of the original owner Kuppana Gounder, sold their 1/3rd interest of 3.70 acres in S.F. No. 273 to the petitioner through sale deeds dated 23.07.1990 and 11.07.1996. It, therefore, is the contention of the petitioner and his group that the entire extent of 11.10 acres in Survey No. 273 came to be legally and rightfully held by them.

5. Mr. P.M. Duraiswamy, learned counsel for petitioner, submitted that in preferring the complaint, the de facto complainant had suppressed the fact of earlier civil proceedings. A suit in O.S. No. 254 of 1996 on the file of District Munsif, Palladam, for permanent injunction moved by Palanisamy Gounder and Others, through whose legal heirs the de facto complainant party stakes claim, has been dismissed for default on 05.10.2001. A further action in O.S. No. 139 of 1997 on the file of the same Court by the de facto complainant party and Others against the petitioner/accused party and again seeking the relief of permanent injunction also has been allowed to be dismissed for default on 09.01.2003. In preferring the complaint, no mention has been made of the earlier actions. The claim of the de facto complainant party on the flow of title is erroneous. The de facto complainant party had moved one more action in O.S. No. 36 of 1995 before the Sub Court, Tiruppur. After initially passing an interim order in favour of the plaintiff, such Court dismissed I.A. No. 95 of 1995 in such suit moved for interim injunction under orders dated 10.04.1995. In doing so, the said Court specifically found that the Re-settlement and Resurvey Register in informing the names of the owners in S.F. No. 273 as P. Nachimuthu and "two others" bore an asterix. Reference to asterix required that a detailed list be seen. The de facto complainant party/plaintiffs mala fidely had not furnished such detailed list. Page No. 118 of Ex. B4 informed fuller details of the patta holders to the property and disclosed that the holders of S.F. No. 273 were P. Nachimuthu Gounder, K. Chinnathambi Gounder and K. Arunachal Gounder. Therefore, the de facto complainant party's contention was wrong. The Court came to such conclusion on the basis of certified copies issued by Coimbatore Collector-ate. It specifically was found that the petitioner and his father had purchased and were in possession of all, but 74 cents of the extent of 11.10 acres in S.F. No. 273 and an extent of 2.40 acres sold to Eswaran by legal heirs of Arunachala Gounder. Against the dismissal of I.A. No. 95 of 1995, the de facto complainant party had moved C.M.A. No. 154 of 1995 on the file of District Court, Coimbatore, which

came to be dismissed on 22.10.1998. To further buttress his arguments, learned counsel produced a certified copy of a mortgage deed dated 29.07.1912 registered as document No. 1993 of 1912 to establish that the legal heirs of Palanisamy Gounder @ Palanisamy viz., P. Nachimuthu, P. Amaravathi, P. Muthusamy and P. Ramasamy, had thereunder mortgaged only 1/3rd interest in S.F. No. 273. The suggestive inference is that Palanisamy Gounder only inherited 1/3rd interest in S.F. No. 273. Learned counsel submitted that despite the above particulars being brought to the notice of the then Inspector of Police, Anti Land Grabbing Special Cell, District Crime Branch, Tirupur, such police was harassing the petitioner and his party and had gone to the extent of addressing a communication dated 12.01.2014 to the Tahsildar, Palladam, Tirupur, requiring such authority to grant joint patta in the names of the de facto complainant party.

6. Shri. B. Kumar, learned senior counsel for respondents 2 to 5, submitted that the petitioner, his father M.P. Ramasamy and one Eswaran had purchased extents of 2.50, 2.50 and 2.40 acres, totally 7.40 acres, under sale deeds dated 10.09.1990, 06.09.1990 and 02.09.1990 from the legal heirs of Arunachala Gounder when Arunachala Gounder himself had purchased only an extent of 3.70 acres from the sons of Palanisamy Gounder under sale deed dated 21.07.1915 registered as document No. 1840 of 1915. Learned senior counsel, therefore, would contend that on the face of it, the petitioner's claim was false. After touching upon the flow of title charts prepared by respondents 2 to 5, learned senior counsel referred to an encumbrance certificate for the period 01.01.1895 to 31.12.1900 issued on 11.02.2014 which inter alia informs of a mortgage executed by Palanimuthu (Palanisamy) Gounder in respect of S.F. No. 273 on 25.02.1890, of an extent of 8.89 acres. Learned senior counsel referred to the Settlement Deed executed by the original owner Kuppana Gounder in favour of Arunachala Gounder and Nachimuthu Gounder in respect of various extent of property to inform that the same did not touch upon property in S.F. No. 273. Therefrom, learned senior counsel would require this Court to draw the inference that the property in S.F. No. 273 was held entirely by Palanisamy Gounder. Learned senior counsel would contend that the suits referred to by learned counsel for petitioner were those that sought bare injunction wherein the question of title could not be decided and were of no relevance. Ex. B4, relied upon by Sub Court, Tirupur, towards dismissing an application for interim injunction was false. His further submission was that the reference in the Re-settlement and Resurvey Register of the year 1913 to P. Nachimuthu and two others necessarily would mean immediate family members and therefore such document (Ex. B4), a handwritten one, informing the uncles of P. Nachimuthu Gounder were joint holders necessarily was false. Learned senior counsel referred to the response of the Public Information Officer, District Land Survey Office, Tirupur District, to the effect that the records relating to Ex. B4 were not available with/pertaining to its office. One further submission of learned senior counsel was that the extents held by the accused was 11.27 acres as against the total extent of S.F. No. 273 being 11.10 cents.

7. By way of reply, learned counsel for petitioner submitted that the respondents 2 to 5 in seeking information under the Right to Information Act had not specifically raised the question as to who were the two others referred to in the Re-settlement and Resurvey Register of the year 1913. Submitting that the petitioner/accused party had purchased property in the year 1990 and were holding the same, learned counsel informed that the de facto complainant's party had effected purchase in the year 1995 and that the projection of Palanisamy Gounder as the sole owner of property in S.F. No. 273 is false.

8. Mr. C. Emalias, learned Additional Public Prosecutor, relying on the counter filed by the Inspector of Police, Anti Land Grabbing Special Cell, Tiruppur District, submits that the complaint allegations did make out & prima facie case which stood duly registered and only on completion of investigation, the real culprits would be identified and therefore, it would not be appropriate to quash proceedings at this stage.

9. This Court has considered the rival submissions.

10. This Court is in no doubt whatsoever that the petitioner and the purchaser along with him are being subjected to an unjust prosecution. The petitioner's father, is also arrayed as an accused despite his having died in the year 1998. The earlier civil proceedings between the parties, all having been dismissed for default and particularly the order in I.A. No. 95 of 1995 in O.S. No. 36 of 1995 passed by Sub Court, Tirupur and the dismissal of C.M.A. No. 154 of 1995 there against stands suppressed. In deciding a plea for injunction, it would be open incidentally to touch upon title/possession and that is what the Sub Court, Tirupur , has done under orders in I.A. No. 95 of 1995 in O.S. No. 36 of 1995. Such order informs that two extents of 37 cents i.e., a total of 74 cents in S.F. No. 273 was held by other persons and that through sale deeds in their favour both from the legal heirs of Chinnathambi Gounder and Arunachala Gounder as also from a purchaser under them, the petitioner and his father have come to hold an extent of 10.36 acres. Such 10.36 acres and an extent of 74 cents held by two others comprise the total S.F. No. 273 extent of 11.10 acres. The document referred to as Ex. B4 in I.A. No. 95 of 1995 in O.S. No. 36 of 1995 on the file of Sub Court, Tirupur , was one issued by the Coimbatore Collectorate. In seeking information, that too, not regards who the two persons referred to in Re-settlement and Resurvey Register of the year 1913, as "Nachimuthu Gounder and two others" are and from a different office viz., Public Information Officer, District Land Survey Office, Tirupur District, and seeking to use a reply of such office which is neither here nor there, the respondents 2 to 5 are clutching at straws.

11. In answer to the encumbrance certificate relied upon by learned senior counsel for respondents 2 to 5 towards informing that the entire field in S.F. No. 273 belonged to Palanisamy Gounder, learned counsel for petitioner has produced a copy of the certificate of confirmation of auction sale relating to the mortgage referred to by learned senior counsel which discloses that the holding

of the defendant Palanimuthu (Palanisamy) Gounder was an 1/3rd interest in an extent of 8 acres 88 and 1/3 cents. The mortgage deed reference in the encumbrance certificate spoke of an extent of 8.89 acres. This Court is unable to appreciate the contention of learned senior counsel that the reference of P. Nachimuthu Gounder and two others only can be his brothers and cannot refer to his uncles. Suffice to state that preference of complaint in Crime No. 32 of 2013 for offences under sections 120-B, 420, 423, 467, 468, 471, 294(b), 506(H) IPC and 82 of Indian Registration Act, 1908, on the file of the first respondent, is a mala fide action and the fact of the then Inspector of Police, Anti Land Grabbing Special Cell, District Crime Branch, Tirupur, aiding an unjust cause is apparent from her communication to the Tahsildar, Palladam, Tirupur, dated 12.01.2014, requiring inclusion of the de facto complainant party as joint pattadhars in S.F. No. 273, even during the pendency of the investigation. This, the then Inspector of Police, Anti Land Grabbing Special Cell, District Crime Branch, Tirupur, does on a complaint preferred on alleged wrong doings 13 years prior. The counter filed by the first respondent informs that he merely is carrying a brief for respondents 2 to 5.

This Criminal Original Petition is allowed with costs in sums of Rs. 50,000/- payable by respondents 2 to 5 and Rs. 25,000/- payable by Mrs. N. Gandhimathi, the then Inspector of Police, Anti Land Grabbing Special Cell, District Crime Branch, Tirupur, to the petitioner within a period of one month from today. The proceedings in Crime No. 32 of 2013 on the file of the first respondent is quashed. Consequently, connected miscellaneous petition is closed.