
(2017) 06 MAD CK 0087

In the Madras High Court

Case No : 35043 of 2016, 35044 of 2016; 30213 of 2016, 30214 of 2016

R SAVITHA; P R PRABHU

APPELLANT

Vs

COMMISSIONER OF POLICE

RESPONDENT

Date of Decision : 01-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 91](#), [Section 160](#) - Summons to produce document or other thing - Police officers power to require attendance of witnesses

Citation : (2017) 06 MAD CK 0087

Hon'ble Judges : M Duraiswamy

Bench : SINGLE BENCH

Advocate : M Duraiswamy

Final Decision : Disposed Off

Judgement

1. Since the issue involved in both the writ petitions are common, by consent of both the parties, both the writ petitions are disposed of by this common order.
2. The petitioners have filed the above writ petitions to issue writs of mandamus, forbearing the 2nd respondent from harassing the petitioners under the guise of interfering with the civil dispute between the petitioners and the respondents 3 to 5 in respect of the property measuring an extent of 528 Sq.ft. comprised in T.S.No.7/17, Devanga High School Road, R.S.Puram, Coimbatore City, pursuant to the summons issued under Sections 160 and 91 CrI.P.C. dated 26.08.2016 and 12.09.2016.
3. The brief case of the petitioners necessary for the disposal of the writ petitions, is as follows:- (i) The petitioner in W.P.No.35043 of 2016, viz., R.Savitha, is the wife of one P.M.Rajamanickam. The petitioner in W.P.No.35044 of 2016, viz., R.Prabu, is the son of R.Savitha and P.M.Rajamanickam. (ii) According to the petitioners, one P.Subburaju, who is the paternal grand-father of Savitha, being the absolute owner of the land measuring 4840 sq.ft., comprised in T.S.No.7/17, Coimbatore City, executed a registered Will dated

30.01.1985 in favour of Savitha (petitioner in W.P.No.35043 of 2016) by creating a life interest to his wife Dhanalakshmi Ammal and son Ramakrishnan. On the death of the said Subburaju on 15.07.1985, the 4th respondent had obtained a power of attorney deed dated 02.06.1997 from Savitha to arrange financial assistance to the partnership business of her husband. (iii) According to the petitioners, the 4th respondent misused the said power of attorney and fraudulently executed a sale deed dated 06.10.1997 in respect of 528 sq.ft. out of the total extent of 4840 sq.ft. in the name of the 5th respondent. Coming to know about the fraudulent sale deed, the petitioner-Savitha had cancelled the power of attorney by way of cancellation deed dated 23.04.1999. (iv) Thereafter, the 4th respondent gave a criminal complaint dated 31.03.2000 and the same was registered in Crime No.10 of 2000 on the file of CCB, Salem City. The case in C.C.No.355 of 2001, on the file of Judicial Magistrate No.V, Salem, ended in acquittal on 01.11.2007. (iv) The 5th respondent and one Viswanathan filed a suit in O.S.No.707 of 1999 on the file of Sub Court, Coimbatore and obtained an ex-parte order of injunction in I.A.No.956 of 1999 on 16.06.1999. Subsequently, the injunction application in I.A.No.956 of 1999 was dismissed on 06.08.1997 holding that the power of attorney deed dated 02.06.1997 in the name of the 4th respondent was invalid, therefore, the consequential sale deed dated 06.10.1997 is also non est in the eye of law. (v) As against the order passed in I.A.No.956 of 1999, the 4th respondent filed an appeal in C.M.A.No.85 of 1999 on the file of II Additional District Court, Coimbatore. The said appeal was also dismissed on 07.09.2000. (vi) The suit in O.S.No.707 of 1999 was transferred to the file of District Munsif Court, Coimbatore and renumbered as O.S.No.4561 of 2004 and was dismissed for default on 04.01.2007. Savitha's father, viz., Ramakrishnan, executed two settlement deeds dated 01.07.2003, by giving up his life interest to her. (vii) After the dismissal of the suit and acquittal of the criminal case, the respondents 3 to 5 have entered into a criminal conspiracy and created another fraudulent sale deed dated 03.02.2012 in respect of 528 sq.ft., since they have no right or title over 528 sq.ft. of land. Coming to know about the creation of the false document dated 03.02.2012, Savitha and her husband have filed a suit in O.S.No.954 of 2016 for the relief of cancellation of the sale deed dated 03.02.2012 and the same is pending. (viii) According to the petitioners, without considering the nature of the civil disputes, the 2nd respondent issued summons dated 26.08.2016 and 12.09.2016 under Sections 160 and 91 CrI.P.C to appear before him on 06.09.2016. In these circumstances, the petitioners have filed the above writ petitions.

4. The brief case of the 2nd respondent is as follows:- (i) According to the 2nd respondent, the 3rd respondent, viz., C.Arun lodged a criminal complaint before the 1st respondent against the petitioner in W.P.No.35043 of 2016, viz., R.Savitha and the Branch Manager of Karur Vysya Bank, Coimbatore Branch for committing the offence of cheating, conspiracy, criminal breach of trust in respect of the property measuring an extent of 528 sq.ft. bearing Door No.79A, Devanga High School Road, R.S.Puram, Coimbatore Town and the complaint

was forwarded to the 2nd respondent for taking necessary legal action and report the same to the 1st respondent. On receipt of the said complaint, the 2nd respondent sent summons to the petitioners under sections 160 and 91 of the CrI. P.C. to appear on 06.09.2016 at 11.00 a.m. before him. The summons sent to the petitioners were received by Savitha's husband, viz., Rajamanickam. The said Rajamanickam made an endorsement in the summons stating that his wife Savitha is out of station and informed that he will make her to appear before the 2nd respondent for enquiry on 06.09.2016 without fail. However, the said Rajamanickam appeared before the 2nd respondent on 03.09.2016 and gave a letter stating that his wife Savitha is staying in Chennai and informed the 2nd respondent that she would appear on 12.09.2015 for enquiry. (ii) On 12.09.2015, Savitha (Petitioner in W.P.No.35043 of 2016) appeared before the 2nd respondent and gave a letter requesting further time to produce the documents on her side by 21.09.2016. On 12.09.2015, the complainant's representative, viz., Arun, S/o.Nallathambi also appeared on behalf of the complainant. He also gave a letter to the 2nd respondent that he will appear for further enquiry on 21.09.2016 along with relevant documents. In the mean time, on 03.09.2016, the complainant, viz., C.Arun, S/o.Chithambaram gave a letter to the 2nd respondent and requested to send summon to P.R.Prabhu (Petitioner in W.P.No.35044 of 2016). The 2nd respondent sent summons to P.R.Prabhu and called upon him to appear on 21.09.2015 for petition enquiry. (iii) On 21.09.2016, the complainant, viz., C.Arun, S/o.Chithambaram and P.Rajamanickam alone appeared before the 2nd respondent. The said Rajamanickam gave a letter seeking further time for his son's appearance. Further, he informed the 2nd respondent that he would appear on 03.10.2016 along with his wife and son with all documents, however, they did not appear before the 2nd respondent for petition enquiry. (iv) According to the 2nd respondent, the complainant, viz., C.Arun, S/o/Chithambaram and his representative viz., Arun, S/o.Nallathambi have appeared for petition enquiry and produced the relevant documents. Further, the 2nd respondent has stated that he is conducting the enquiry in accordance with the provisions of law and he has not violated any provisions of the law.

5. The brief case of the 4th respondent is as follows:- (i) According to the 4th respondent, Savitha approached him in the year 1997 and claimed that she is the absolute owner of the property measuring an extent of 4840 sq.ft. in T.S.No.7/70 in Coimbatore city and requested him to purchase the property for which she executed a power of attorney on 02.06.1997 in his favour. Further, according to the 4th respondent, though it was titled as power of attorney, in fact, it was executed by her only after receiving entire sale consideration.

(ii) The 4th respondent executed a sale deed on 06.10.1997 conveying an extent of 528 sq.ft. only out of the total extent of 4840 sq.ft. to the 5th respondent. According to the 4th respondent, the sale deed dated 06.10.1997 is valid. The petitioner, with an ulterior motive, cancelled the power of attorney deed on 23.04.1999. The cancellation of power of attorney is illegal and unwarranted and

the same is not binding on him. The 4th respondent gave a police complaint for cheating and defrauding and criminal case was also initiated against Savitha in C.C.No.335 of 2001 on the file of Judicial Magistrate No.V, Salem. The said Savitha and her husband were arrayed as A1 and A2 in the said case. However, due to failure of the prosecution in providing necessary documents, both of them were acquitted by the Criminal court on 01.11.2007. Thereafter, the 4th respondent filed a suit in O.S.No.707 of 1999 on the file of Sub Court, Coimbatore against Savitha and her husband for permanent injunction. Though an order of injunction was granted in I.A.No.956 of 1999 in O.S.No.707 of 1999, the same was vacated on 06.08.1999. The 4th respondent executed the sale deed dated 06.10.1997, when the power of attorney deed was very much in force and before its cancellation on 23.04.1999. Therefore, when the purchasers, viz., the 5th respondent and the legal heirs of Viswanathan, who had a valid title and ownership, conveyed their property by sale deed dated 03.12.2012 to the 3rd respondent, the 3rd respondent, who had purchased an extent of 528 sq.ft. appears to have given a complaint to the respondents 1 and 2 and on that basis some enquiry is going on, for which, the 4th respondent cannot be held responsible. In these circumstances, the 4th respondent has prayed for dismissal of the writ petitions.

6. Heard Mr.N.Manoharan, learned counsel appearing for the petitioners, Mr.A.N.Thambidurai, learned special Government Pleader, appearing for the respondents 1 and 2 and Mr.K.Rajasekaran, learned counsel appearing for the 4th respondent.

7. Mr. N.Manoharan, learned counsel appearing for the petitioners submitted that the 4th respondent had fraudulently sold the property to the 5th respondent by using the power of attorney deed dated 02.06.1997, when the same was given to the 4th respondent only to arrange financial assistance to the petitioner in W.P.No.35043 of 2016, viz., Savitha. Further, the learned counsel submitted that the said Savitha and her husband have filed a suit in O.S.No.954 of 2016 to cancel the sale deed dated 03.02.2012 executed in favour of the 3rd respondent and the same is pending. Further, the learned counsel submitted that even during the pendency of the suit in O.S.No.954 of 2016, the respondents 1 and 2 are harassing the petitioners under the guise of interfering with the civil dispute, which cannot be supported by any provision of law. In support of his contention, the learned counsel, relied upon the following judgments:- (i) 2004(1) CTC 130 (Prakash Transports v. Inspector of Police, Central Crime Branch Salem) wherein this Court held as follows:-

"1. This is a petition to quash the summons issued by the respondent police. The summons issued to the petitioners is at page No.1 of the typeset. The summons reads as follows:-

In respect of complaint given by one Mr.G.Ravichandran, 41, Sankari Main Road, Annadanapatti, Salem, I hereby issue summon to you under Section 160 Cr.P.C. to 1 to 7 of you, requesting all of you to make yourself available before me at my

office for my enquiry into the complaint of Mr.G.Ravichandran against you, on 15.3.2002 at 10.30 a.m. without fail."

2. The learned counsel appearing for the petitioners submits that as no crime was registered by the respondent-police, he has no jurisdiction to issue summons under Section 160 Cr.P.C. compelling the petitioners to appear before him and therefore, the summons has to be quashed. I find some substance in the said contention. The summons, which I have extracted above, shows that the officer did not even mention the crime number in the said summons. The learned Public Prosecutor also submits that no crime was registered by the respondent. If that be the case, it is not understandable as to how he should issue summons, since under Section 160 Cr.P.C., summons could be issued by any police officer making an investigation under that Chapter, which means that investigation is a sine qua non for issuing summons and the investigation can be conducted only in connection with the crime registered in terms of Section 154 Cr.P.C. Since there is no crime registered in terms of Section 154 Cr.P.C., no summons can be issued under Section 160 Cr.P.C., summoning a person to appear before the officer. As the summons summoning the petitioners, issued by the officer, is without jurisdiction, it is quashed. The petition is allowed."

(ii) 2007(3) L.W.68 (R.Mala v. The Secretary, A.2943 Alanthur PAC Bank, Thiruppalai Branch, Oomachikulam, Madurai - 625 014 and others) wherein this Court held as follows:-

7.02 Plain reading of the above disclose that in pursuance of the directions of the second respondent to the first respondent to freeze the bank transactions of the petitioner the first respondent has issued the impugned notice.

7.03 The contents of the impugned letter of the second respondent dated 4.6.2004 clearly discloses that there is civil dispute between the parties with regard to partition of property after the death of their father and the bank deposits have been transferred to the savings bank account of the petitioner.

7.04 It is a civil dispute. But, by ignoring this fact, the second respondent has issued a direction to the first respondent to freeze the operation of all bank transactions of the petitioner. This direction is issued as if investigation is pending and investigation is to be completed.

7.05 Chapter XII of the Code of Criminal Procedure deals with the Information to the police and their powers to investigate. The police officer has power and duty to investigate a cognizable offence. No police officer shall investigate a non-cognizable case without the order of the Magistrate.

7.06 For investigating either cognizable case or a non-cognizable case, the police officer shall have to enter the substance of the information in a book in such form as the State Government may prescribe in this behalf. It is popularly known as First Information Report. Section 154 of the Cr.P.C. deals with information to the police in cognizable cases. Section 155 of the Cr.P.C. deals with information

to the police in noncognizable cases.

7.07 There is no provision under the code to conduct any investigation in civil disputes. Police have no power to initiate any investigation in civil case. Inquiry is different and any inquiry u/s.145 Cr.P.C. is not an investigation.

7.08 If a report is received by any police officer disclosing a cognizable offence, then he has duty to register a case under Section 154 of the Cr.P.C. and commence investigation. If report is received in a noncognizable case, he has to obtain permission of the Magistrate for registration of the case as well as for investigation.

7.09 In the instant case, neither a cognizable nor non-cognizable case is alleged against the petitioner. On the other, a civil dispute has been informed to the police officer, the second respondent herein. I do not know the reasons behind over acting by the 2nd respondent by addressing the impugned letter dated 4.6.2004. It is nothing but abuse of power violating the law of land. The crime number in which investigation is pending is not noted in the letter as there is no investigation. Till today the second respondent is unable to inform whether any case is registered against the petitioner and investigation is pending."

8. Countering the submissions made by the learned counsel appearing for the petitioners, Mr.A.N.Thambidurai, learned special Government Pleader, appearing for the respondents 1 and 2, submitted that the respondents 1 and 2 have acted in accordance with law by issuing summons under sections 160 and 91 Cr.P.C. and therefore, they cannot be found fault with for acting in accordance with law.

9. Mr.K.Rajasekaran, learned counsel appearing for the 4th respondent submitted that the 4th respondent had not defrauded the petitioners and therefore, he is not a necessary party for the adjudication of the writ petitions. That apart, the complainant was lodged only by the 3rd respondent against the petitioners.

10. Though notice was served on the 3rd respondent and his name has been printed in the cause list, none appeared on behalf of the 3rd respondent.

11. The 3rd respondent lodged a complaint dated 26.08.2016 before the 1st respondent, Commissioner of Police, Coimbatore City against the petitioner in W.P.No.35043 of 2016, viz., Savitha and the Branch Manager of Karur Vysya Bank, Coimbatore Branch for committing the offence of cheating, conspiracy, criminal breach of trust in respect of the property measuring an extent of 528 sq.ft. bearing Door No.79A, Devanga High School Road, R.S.Puram, Coimbatore Town and the said complaint was forwarded to the 2nd respondent for taking necessary legal action and report the same to the 1st respondent. On receipt of the said complaint, the 2nd respondent, the Assistant Commissioner of Police, Anti Land Grabbing, Special Cell, Coimbatore City, issued summons under sections 160 & 91 of Cr.P.C. to appear before him for petition enquiry. At the request of the Savitha's husband, viz., Rajamanickam, the enquiry was adjourned to different dates for production of documents.

12. The 2nd respondent, in his counter has stated that the said Rajamanickam has given letters to the 2nd respondent seeking for adjournment of the petition enquiry, since the petitioner-Savitha was staying at Chennai. Subsequently, the petitioner in W.P.No.35043 of 2016, viz., R.Savitha appeared before the 2nd respondent on 12.09.2016 for the petition enquiry and on that day, she gave a letter to the 2nd respondent requesting further time to produce the documents. However, the petitioners have not produced any documents before the 2nd respondent so far. Since the 3rd respondent has lodged a complaint with the 1st respondent, the 2nd respondent was directed by the 1st respondent to investigate the matter. Mere issuance of summons under sections 160 and 91 of the Cr.P.C. calling upon the petitioners to appear before the 2nd respondent cannot be held to be erroneous.

13. However, it is the case of the petitioners that on 02.06.1997, the petitioner-Savitha, executed a power of attorney deed in favour of the 4th respondent to arrange for financial assistance to her. The 4th respondent contended that he had paid the entire sale consideration to her and instead of getting the sale deed registered in his name, he obtained the power of attorney deed on 02.06.1997.

14. It is pertinent to note that a deed of power of attorney shall not confer title on any party. The title will get transferred in favour of the purchaser, only after getting the sale deed registered in his favour. Further, the petitioners have not produced the copy of the power of attorney deed before this court. Though they have enclosed the other documents, power of attorney deed dated 02.06.1997 do not find a place in the typed set of papers. Thereafter, on 06.10.1997, the 4th respondent sold an extent of 528 sq.ft. out of the total extent of 4840 sq.ft. to the 5th respondent, who in turn, sold the property measuring an extent of 528 sq.ft. to the 3rd respondent under a registered sale deed dated 03.02.2012. Challenging the said sale deed, the petitioner in W.P.No.35043 of 2016, viz., R.Savitha and her husband, viz., P.M.Rajamanickam, have filed a suit in O.S.No.954 of 2016 on the file of Sub Court, Coimbatore against the respondents 3 to 5 and others. In the said suit, Savitha and her husband have also sought to declare the sale deed dated 06.10.1997 executed by the 4th respondent in favour of the 5th respondent as null and void and also sought for declaration that she is the absolute owner of the A schedule property. They also sought for declaration to declare the lease deed dated 09.03.1998 as null and void. The complainant therein also sought for permanent injunction against the defendants and also for mandatory injunction.

15. It is also pertinent to note that the 5th respondent and one Viswanathan filed a suit in O.S.No.707 of 1999 against the petitioner in W.P.No.35043 of 2016 and her husband for permanent injunction. Subsequently, the suit in O.S.No.707 of 1999 was transferred to the file of District Munsif Court, Coimbatore and was dismissed for default. On 31.03.2000, the 4th respondent gave a criminal complaint against the petitioner-Savita and her husband in Crime No.10 of 2000 on the file of the CCB, Salem City and a case was registered and the criminal

case in C.C.No.355 of 2001, on the file of Judicial Magistrate No.V, Salem ended in acquittal.

16. It is also pertinent to note that on 01.07.2003, the father of the petitioner-Savitha, viz., Ramakrishnan, executed two settlement deeds dated 01.07.2003 giving up his life interest in favour of the petitioner-Savitha. When there is clear dispute with regard to the title of the property, the 4th respondent, who claims title over the suit property, should have filed a suit against the petitioners to declare his title over the property. The 4th respondent cannot claim title based on the power of attorney deed. Even in the pleadings, I do not find the reasons for executing the power of attorney deed by the petitioner-Savitha in favour of the 4th respondent. Now, the petitioner-Savitha and her husband have filed a civil suit in O.S.No.954 of 2016 to declare the sale deeds as null and void and to declare that the writ petitioner-Savitha is the absolute owner of the suit property.

17. When civil litigations between the parties are going on for nearly 20 years, the 2nd respondent should have taken into consideration the pendency of the civil dispute and the prayers sought for in the suit in O.S.No.954 of 2016 and should have waited till the outcome of the civil dispute. Merely because the 3rd respondent has given a complaint to the respondents 1 and 2, it shall not give any authority to the 2nd respondent to harass the petitioners, when the facts placed before me clearly establish that the dispute is civil in nature (i.e.) with regard to the title of the property between the petitioners and the respondents 3 to 5.

18. When the respondents 3 to 5 are parties to the suit in O.S.No.954 of 2016, which is a comprehensive suit filed by the petitioner- Savitha and her husband, the 2nd respondent cannot give a different finding with regard to the title of the property. It is only for the civil court to decide the title of the property after taking into consideration the oral and documentary evidence let in by the parties.

19. The suit in O.S.No.954 of 2016 was filed by the petitioner- Savitha and her husband on 04.07.2016, whereas, the 3rd respondent had given the complaint to the 1st respondent on 26.08.2016 i.e. after the filing of the suit. Based on the complaint, the 2nd respondent had issued summons to the petitioners on 26.08.2016 and 12.09.2016.

20. The ratios laid down in the judgments relied upon by the learned counsel for the petitioners squarely applies to the facts and circumstances of the present case.

21. The Trial Court, viz., The Sub Court, Coimabtoe shall decide the suit in O.S.No.954 of 2015 on merits and in accordance with law, uninfluenced by any of the observation given in this order independently, based on the oral and documentary evidences to be let in by the parties.

22. For the reasons stated above, the 2nd respondent is restrained from harassing the petitioners under the guise of interfering with the civil dispute

between the petitioners and the respondents 3 to 5 in respect of the property measuring an extent of 528 Sq.Ft. comprised in T.S.No.7/17, Devanga High School Road, R.S.Puram , Coimbatore City, pursuant to the summons issued under Sections 160 and 91 CrI.P.C. dated 26.08.2016 and 12.09.2016. However, I make it clear that in the event of any law and order problem between the parties, the respondents 1 and 2 are at liberty to proceed against either of the parties and take action in accordance with law. With these observations, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.