

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.1598 of 2015

and

M.P.No.1 of 2015

1.M.Maria Rajam

2.K.Michael Arokiam

... Appellants/Petitioners

Vs.

1. The Inspector General of Registration,
Office of the Inspector General Registration,
No.100, Santhome High Road, Chennai - 600 028.

2. The District Registrar (Administration),
Assistant Inspector General Grade,
No.9, Jennis Road, Saidapet,
Chennai - 600 015.

3. M.Murugesan

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order of this Court dated 05.03.2015 in W.P.No.25894
of 2014.

Writ Petition filed under Article 226 of the Constitution of
India, praying for a Writ of Mandamus directing the second
respondent to conduct the enquiry as per the direction issued
by the first respondent in Letter No.3315/U1/2014 dated
29.04.2014.

For Appellants

: Mrs.Chitra Sampath

Senior Counsel

for Mr.D.Naveen Durai Babu

For Respondents 1 & 2

: Mr.P.S.Sivashanmugasundaram

Special Government Pleader

For 3rd Respondent

: Mr.AR.L.Sundaresan

Senior Counsel

For Mr.P.R.Sathiyarayanan

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellants have filed the present intra-Court Writ Appeal as against the order dated 05.03.2015 in W.P.No.25894 of 2014 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order on 05.03.2015, in W.P.No.25894 of 2015 (filed by the Appellants/ Petitioners), at paragraphs 5 to 7, had observed the following:

"5.Subsequently, this Court in CrI.R.C.No.393 of 1994 after considering the evidence and document produced found that no criminal initiation or fraud was committed by Murugesan, who has said to have executed the document in favour of Tmt.Sivanthiammal and accordingly order passed discharging Murugesan was confirmed. Further it is seen that the 2nd petitioner has filed a Pauper O.P. before this Court against the 3rd respondent and others to set aside the sale deed Document No. 1317 of 1984, which is one of the document, sought to be set aside in this Writ Petition. The said suit is also before this Court and was numbered as C.S.No.430 of 2000 and the same has already been transferred to City Civil Court and re-numbered as O.S.No.12136 of 2010.

6.It is seen that the validity of the sale deed is now pending before the civil court and the 3rd respondent in his counter affidavit has stated that the proof affidavit has been filed in this suit and partly cross-examination has been done by the counsel for the defendants. At this stage, the Writ Petition has been filed by including the 1st petitioner, who is the wife of the 2nd petitioner and a direction is sought for to cancel the document.

7.In the light of the fact that the civil court is already seized of the matter, this Court is not inclined to entertain the prayer sought for in this Writ Petition to issue any direction."

and resultantly, dismissed the Writ Petition, leaving it open to the parties to canvass the rights before the Civil Court in the pending suit.

3.The Learned Senior Counsel for the Appellants contends that the Learned Single Judge had failed to consider that the Appellants/ Petitioners are aggrieved against the inaction of the 2nd Respondent in not conducting the enquiry as per the direction of the 1st Respondent/ Inspector General of Registration, Chennai, vide letter No.3315/01/ 2014 dated 29.04.2014.

4.According to the Learned Senior Counsel for the Appellants, the 2nd Respondent/District Registrar (Administration), Chennai, being a subordinate authority of the 1st Respondent, has a duty bound to follow the direction issued by the 1st Respondent.

5.The prime plea taken by the Appellants is that the Learned Single Judge, while dismissing the Writ Petition, had failed to note that even as per the direction of the 1st Respondent/Inspector General of Registration, Chennai, the issue of cancellation of document was not directed to be considered but only to enquire about the violation of the procedure described for registration under Section 83 of the Indian Registration Act, 1908 was directed to be done and the Writ Petition projected by the Appellants/Petitioners was only for issuance of direction to hold an enquiry.

6.In response, the Learned Special Government Pleader for the Respondents 1 and 2 contends that the 1st Respondent/Inspector General of Registration, Chennai in letter No.3315/U1/2014 dated 12.02.2014 (signed on 29.04.2014) to the 2nd Respondent/District Registrar (Administration), Chennai had stated that the application of the 2nd Appellant/2nd Petitioner was sent to him and further that the Inspector General of Registration's Circular No.67 dated 03.11.2011 was stayed by this Court (Principal Seat and Madurai Bench). Added further, he was directed to take suitable action in accordance with his letter dated 30.01.2013 (mentioned in Reference No.2) and if the documents were found to have been registered contrary to Section 83 of the Indian Registration Act, suitable action was required to be taken and the 2nd Appellant/2nd Petitioner shall be informed about the result of the enquiry. Further, the 1st Respondent had directed the 2nd Respondent to complete the enquiry within 15 days and to communicate the development to his office by avoiding delay.

7.Further, the Learned Special Government Pleader for the Respondents 1 and 2 brings it to the notice of this Court that the 2nd Respondent/District Registrar, Chennai had addressed a notice to the 3rd Respondent in Reference No.205/A1/2012 dated 08.05.2014 based on the complaint of the 2nd Appellant/2nd

Petitioner dated 04.01.2012 stating that an enquiry was conducted and that he was directed to produce documentary evidences which were not produced till now and further, he was directed to appear on 26.05.2014 at 11.00 a.m. at the District Registrar Office, Saidapet, Chennai - 15 along with all documentary evidences.

8.The Learned Special Government Pleader for the Respondents 1 and 2 proceeds to take a stand that the 2nd Appellant/2nd Petitioner filed a Pauper O.P. before this Court against the 3rd Respondent and others to set aside the Sale Deed bearing Document No.1317/1984 (which is one of the documents sought to be set aside in the Writ Petition) and the said suit was numbered before this Court as C.S.No.430 of 2000 and later the same was transferred to City Civil Court and renumbered as O.S.No.12136 of 2010 and as such, the 2nd Respondent has not proceeded further in the matter [notwithstanding the fact numerous chances were given to the 3rd Respondent to produce the documents but he had not produced the same].

9.Conversely, the Learned Senior Counsel for the 3rd Respondent submits that the 2nd Appellant/2nd Petitioner preferred a criminal complaint against the 3rd Respondent and others for criminal breach of trust etc., which was taken on file in C.C.No.7617 of 1993 and in fact, as against the order dated 07.06.1994 in Crl.M.P.No.689 of 1994 in C.C.No.7617 of 1993 passed by the Learned XI Metropolitan Magistrate, Saidapet, the 3rd Respondent preferred Crl.R.C.No.393 of 1994 before this Court and this Court ultimately allowed the Criminal Revision Petition by observing that the order passed by the XI Metropolitan Magistrate holding that there are grounds to proceed against the 1st Accused under Section 409 and 418 I.P.C., are not sustainable and set aside the same by discharging the 3rd Respondent. Further, the suit filed by the 2nd Appellant/2nd Petitioner in C.S.No.430 of 2000 before this Court was later transferred to the City Civil Court and renumbered as O.S.No.12136 of 2010 and in view of the fact that the Civil Court is seized of the matter, the Learned Single Judge had rightly dismissed the Writ Petition.

10.At this stage, this Court worth recalls the decision of the Hon'ble Supreme Court in Dharamdeo Rai V. Ramnagina Rai, AIR 1972 Supreme Court 928, it is observed and held as follows:

"Section is not prohibitory in character and it does not preclude a private person from commencing a prosecution for an offence under the Act without the permission as envisaged in the section. The section provides only for one type of cases, namely, cases in which the

commission of an offence under the Act comes to the knowledge of the Registering Officer in his official capacity and even there, the language of the section is permissive and not mandatory."

11. On a careful consideration of the respective contentions and this Court bearing in mind that the 1st Respondent/Inspector General of Registration, Chennai had addressed a letter dated 12.02.2014 to the 2nd Respondent/District Registrar (Administration), South, Chennai directing him to take suitable action by conducting an enquiry and completing the same within 15 days based on the complaint/ application of the 2nd Appellant/2nd Petitioner and to inform her about the result of enquiry etc., and also considering the yet another fact that the enquiry is still pending on the file of the 2nd Respondent, this Court, without expressing any opinion one way or other on the merits of the matter, at this stage, simpliciter, in the interest of Justice, Fair Play, Equity and Good conscience, directs the 2nd Respondent/District Registrar, Chennai to complete the enquiry [which was ordered to be conducted by the 1st Respondent] and to pass a reasoned speaking order on merits and in accordance with law within a period of six weeks from the date of receipt of copy of this Judgment [of course after providing due opportunities to the respective parties by issuing notices and also by adhering to the Principles of Natural Justice]. It is needless for this Court to make a significant mention that the 2nd Respondent/District Registrar, Chennai shall pass final orders in the subject matter in issue in a dispassionate manner, uninfluenced and untrammelled with any of the observations made by this Court in this Writ Appeal. Liberty is granted to the respective parties to raise all factual and legal pleas before the 2nd Respondent/District Registrar, Chennai and also to produce copies of relevant documents which they rely, if they so desire/advised. The parties are directed to lend their assistance and unstinted cooperation to the 2nd Respondent/District Registrar, Chennai for completion of the enquiry within the time limit determined by this Court.

12. With the aforesaid observations and directions, the Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

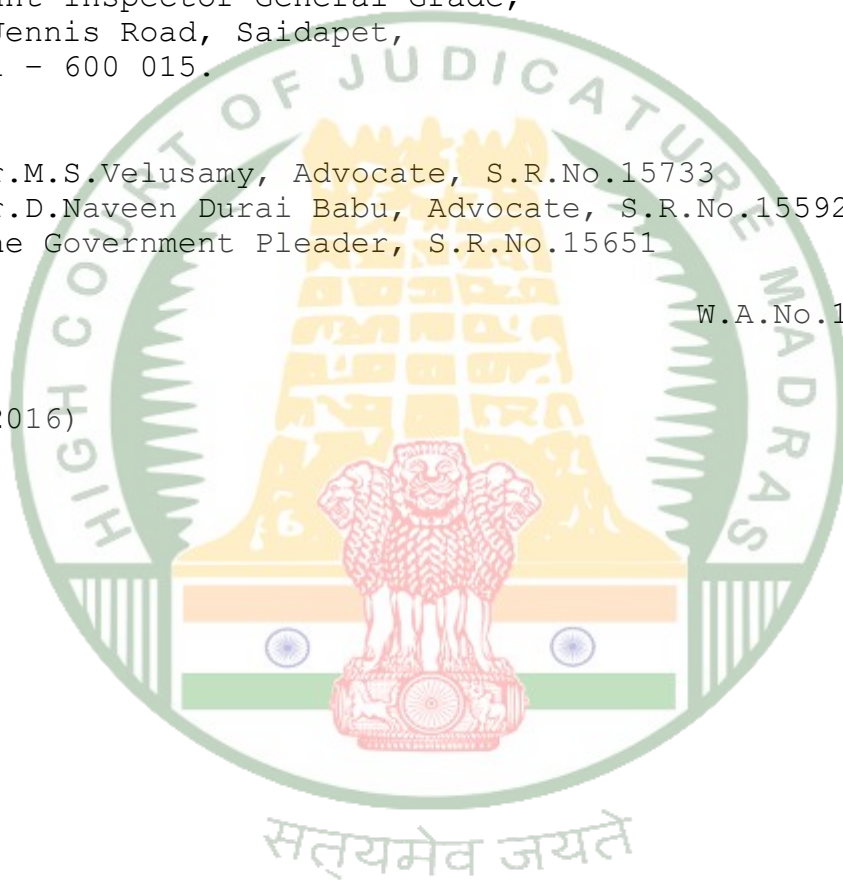
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+1cc to Mr.M.S.Velusamy, Advocate, S.R.No.15733
+1cc to Mr.D.Naveen Durai Babu, Advocate, S.R.No.15592
+1cc to the Government Pleader, S.R.No.15651

W.A.No.1598 of 2015

SNS (CO)
CA(30/03/2016)



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