



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2018

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD) No.9633 of 2018

and

W.M.P (MD) No.8897 of 2018

K.Ratnam

... Petitioner

Vs.

1.The District Registrar,
Office of the District Registrar,
Kokirakulam,
Palayamkottai,
Tirunelveli - 627 009.

2.The Sub-Registrar,
Melapalayam,
Tirunelveli - 627 005.

3.Jayalakshmi

4.Muthuselvi

5.Gunaseelan

6.C.Palavesam@Balu

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the impugned order in Na.Ka.No.7021/A3/2017, dated 21.12.2017 passed by the first respondent and quash the same as illegal and further direct the first respondent to cancel the registration of documents registered under Document Nos.4988 of 2017, 4989 of 2017 and 4990 of 2017 in the office of the second respondent.

For Petitioner : Mr.G.Prabhu Rajadurai

For RR 1 & 2 : Mr.M.Murugan,
Government Advocate.

For RR 3 to 6 : Mr.N.Ananthapadmanaban

ORDER

This writ petition is filed to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order, dated 21.12.2017 made in Na.Ka.No.7021/A3/2017 issued by the first respondent and to quash the same and consequently direct the first respondent to cancel the registration of the documents registered



under Document Nos.4988 of 2017, 4989 of 2017 and 4990 of 2017 in the office of the second respondent.

2. The petitioner claims that the petitioner and his son Ravichandran are the owners of the property to an extent of 3.31 acres in Kulavanigapuram Village, Melapalayam Ward, Tirunelveli Corporation Limits and they acquired the same through several sale deeds between 1982 and 2000 along with his wife and two daughters. The petitioner would further claim that they have also purchased two adjacent properties bearing S.Nos.1001/1A1A, 1001/1A2A, 1001/3, 1001/5 and 1001/6 and now T.S.Nos.189 and 192 and they are in possession and enjoyment of the property and they protected the same by constructing a compound wall and had constructed two marriage halls, a hallow block manufacturing company limited and 11 houses for the employers to stay and utilised by them as quarters and they have even erected a memorial for the petitioner's wife inside the said premises.

3. The learned counsel appearing for the petitioner would further claim that while so, the petitioner came to knowledge that one Mohanan, claiming to be the cousin of the third respondent, filed a collusive suit in O.S.No.126 of 2015 on the file of the I-Additional District Court, Tirunelveli, against the third respondent claiming partition of the properties in Survey No.1000 measuring 4.44 acres now sub-divided as S.Nos.1000/D and 1000/4, in which middle portion of 97 cents. The said collusive suit came to be decreed on 11.12.2016 in favour of the plaintiff/third respondent herein. Having obtained the decree in her favour, the third respondent on 13.12.2017, had executed a settlement deed in favour of her daughter ie., the fourth respondent herein. In the settlement deed, the third respondent claimed that she has become the absolute owner of the property by virtue of the decree, dated 11.02.2016 made in O.S.No.126 of 2015 and on the same day, after the execution of the settlement deed, the fourth respondent has executed a power of attorney in favour of the fifth respondent and on the very same day, the fifth respondent in turn had executed a sale agreement in favour of the sixth respondent.

4. The learned counsel appearing for the petitioner would further contend that the petitioner came to know all this only when the surveyor came to the property with JCB machine and to demolish their compound wall. Thereafter only, the petitioner came to know that the third respondent claimed right through a bogus 'Will' which was used for obtaining the fraudulent decree.

5. The petitioner immediately filed a revision before this Court in C.R.P.No.2202 of 2017 to strike-off the plaint and the decree so obtained and the petitioner obtained an order of stay of the decree as well as an injunction against the respondents, by order dated 24.11.2017. The petitioner had prosecuted against the third respondent stating that she obtained a collusive decree by creating fraudulent documents by way of filing the criminal



complaint.

6. The learned counsel appearing for the petitioner further assets that on the complaint made by the petitioner, the First Additional District Judge, Tirunelveli, by order dated 11.12.2017, suo-motu reviewed the decree, dated 11.02.2016 in O.S.No.126 of 2015 and had set aside the same. Under these circumstances, when the third respondent executed a settlement deed in favour of the fourth respondent based on the decree made in O.S.No.126 of 2015 which got set aside, the third respondent has no power to register any settlement in favour of the fourth respondent and thereafter, the fourth respondent executing a power of attorney in favour of the fifth respondent, the fifth respondent entering into a sale agreement with the sixth respondent does not arise and the same is liable to be cancelled by directing the first respondent to do so. The petitioner would further contend that when the fourth respondent, who got the property by way of settlement from the third respondent was very much available in the said place and instead of power of attorney executing the sale agreement with the sixth respondent, the fourth respondent herself could have executed the sale agreement. The petitioner made a representation to the first respondent, in which, the first respondent by order, dated 21.12.2017, refused to cancel the documents which is impugned before this Court in the present writ petition.

7. Contrary to the stand taken by the petitioner, the learned counsel appearing for the third respondent contended that the petitioner himself did not come to this Court with clean hands and contended that the petitioner was working as an Assistant Director of Statistics Department in Tirunelveli District and using his position, he has manipulated several documents including FMB sketch and the petitioner himself do not possess the title for the land he claims to be the absolute owner.

8. The learned counsel appearing for the third respondent would vehemently contend that the petitioner had an advantage of locating unoccupied properties where either the owners had left the area and living at far away places or various other places owing to personal inconvenience or other means, the petitioner would create fraudulent documents in his favour to effect title by registering the same at different Registrar office and had committed impersonation and forgery. The petitioner's title itself is under cloud and it is veracity and truth has not been tested for which the third respondent has approached the appropriate civil Court. As such, the third respondent vehemently contended that the third respondent had title over the property by way of a 'Will' executed in her favour in the year 1978 and there was absolute title and they are ready to prove before the appropriate civil Court.

9. In reply to the statement made by the learned counsel appearing for the petitioner and the learned counsel appearing for



the third respondent, the learned Government Advocate appearing for the respondents 1 and 2 submitted that if any document is produced for registration by making false statement, under Sections 82 and 83 of the Registration Act, 1908, provide sufficient means of prosecution and the claim made by the petitioner cannot be countenanced as the petitioner necessarily approach the civil Court for redressal.

10. Heard both the learned counsel appearing on either side and perused the materials available on record.

11. From the prayer made in the writ petition with regard to the calling for the records on the file of the first respondent, dated 21.12.2017, by which the impugned order of the first respondent vide responding to the representation made by the petitioner had categorically held that the first respondent cannot direct the second respondent to cancel the documents registered on 31.10.2017. The petitioner's representation dated 18.12.2017 seeking for cancellation of Document Nos.4988 of 2017, 4989 of 2017 and 4990 of 2017 was declined by the first respondent.

12. It would be appropriate to examine the powers of Registering Authority under the Registration Act, 1908. Part-IV of the Registration Act, 1908 provides the procedures regarding presenting of the documents for registration. Section 32 of the Registration Act, 1908 provides the manner in which a person to be presented for registering a document and who executes the document. If such document is required to be registered and if such person who wants to execute the document by presenting the same for registering unavailable, Section 33 of the Registration Act, 1908 provides the manner in which the power of attorney recognizable for the purpose of presenting the document under Section 32. Sections 34 and 35 of the Registration Act, 1908 provides the power of Registering Officer, who enquired before registering any instrument.

13. On reading the Sections or provisions from Sections 30 to 35 of the Registration Act, 1908, it is clear that when the document is presented before the registering officer, the registering officer is not confer with any judicial power nor quasi-judicial power. The registering officer is exercising only an administrative function not as a judicial officer.

14. The above said provisions from Sections 30 to 35 of the Registration Act, 1908, do not empower the registering officer to exercise judicial power by evaluating the title of the executors, who presents the paper for registering. The fraud committed by the executant will come to the knowledge of the registering officer only when the affected person approaches the registering officer or when a double document presented comes to the knowledge of the registering officer.

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15. Under these circumstances, the statute does not provide



any power to the registering officer to perform judicial or quasi-judicial function and is not expected by the registering officer to perform such function when the statute does not confer any power to that effect.

16. In the same line as seen from the provision to the case in hand, it is categorically clear from the contention made by the learned counsel for the petitioner as well as the rival submissions made by the respondents, certain documents came to be registered by third, fourth and fifth respondents as Document Nos.4988 of 2017, 4989 of 2017 and 4990 of 2017 based on the collusive partition suit in O.S.No.126 of 2015, wherein the third respondent claimed right based on the decree, dated 11.12.2016. However, the said decree came to be set aside, suo motu, by the trial Court and the same was set aside on 11.12.2017, whereas the documents were presented and executed on 13.10.2017. When the third respondent title itself is disputed by the petitioner and the registering officer has taken the same on file, the document presented by the respondents 3, 4 and 5 based on the decree made in O.S.No.126 of 2015, the registering officer cannot be compelled to exercise the function which is not conferred under the statute.

17. Setting aside an instrument presented before the registering officer is a judicial function which cannot be exercised by the registering officer and it can be done only by the civil Court on appreciation of facts and law. Even if the document is fraudulently executed which is apparently known after the execution before the Registrar and which is challenged in the writ jurisdiction and this Court cannot exercise the judicial function by setting aside the document as void.

18. Under these circumstances, this Court is of the view that the prayer made in the writ petition cannot be maintained and the impugned order passed by the first respondent cannot be interfered with and the writ petition is dismissed. Since this Court is not inclined to entertain the writ petition, it is left open to the respective parties to approach the appropriate forum for the respective redressal of their dispute. No costs. Consequently, connected Miscellaneous Petition is closed.

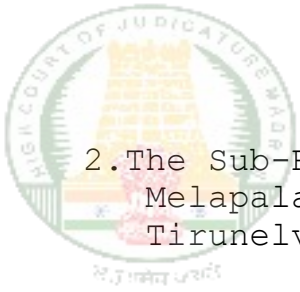
Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar(cs-IV)

To

1.The District Registrar,
Office of the District Registrar,
Kokirakulam,
Palayankottai,
Tirunelveli - 627 009.



2.The Sub-Registrar,
Melapalayam,
Tirunelveli - 627 005.

+1cc to Mr.G.Prabhu Rajadurai Advocate in SR.No.99489

+1cc to APN Law Associates Advocate in SR.No.99337

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P.S

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