

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.NO.1550 OF 2019

&

W.M.P.NOS.1721 & 1722 OF 2019

Kalaiselvi,
W/o.late Selladurai,
Rep. by Power of Attorney Agent,
A.Murugesan son of Arjunan,
No.3/1A, Porasapalayam, Siluvampatti Post,
Namakkal Taluk and District.

... Petitioner

/versus/

1. The Inspector General of Registration,
Santhome, Chennai - 600 028.
2. The District Registrar,
Namakkal District.
3. The Joint Sub Registrar No.1,
Namakkal.
4. M.Selvaraj,
Son of Muthusamy Gounder,
No.6/76, Veesanam Road,
Vettampadi Post, Namakkal.
5. Tmt.Angammal,
W/o.V.K.Mani,
No.5/166, Swamy Nagar, Mohanur Road,
Namakkal.
6. Kailllasam @ Kandasamy,
No.21, Salem Road, Namakkal.
7. P.Ganesan,
S/o.Perianna Gounder,
No.10/E, A.S.Pettai, 1st Street,
Namakkal.

8. K.R.Sivananthan,
S/o.Ramasamy,
No.32/2, North Second Street,
Santhapettai Pudur,
Namakkal.

... Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the records of the 1st respondent herein bearing letter No.41530/U1/2017, dated 09.04.2018 and proceedings in ROC No.2194/A5/2018-1, dated 19.04.2018 of the 2nd respondent herein.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel,
for Mr.D.Sathyaraj

For R1 to R3 : Mr.T.M.Pappiah,
Special Government Pleader

For R5 to R7 : Mr.V.K.Vijayaragavan

For R4 : No appearance

For R8 : Mr.V.Susmitha

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The short point involved in this case is that, the petitioner herein is a permanent resident of Malaysia, holding property in Vettumapadi Village, Namakkal Town measuring 8200 sq.ft in Survey No.295/6, 4.97 acres in Survey No.261/1, 260/2 and 2743 sq.ft in Survey No. 174/2, has been aggrieved by the transfer of her property based on the fraudulent Power of Attorney and also subsequent to the death of the Principal. In this connection, the petitioner has given a complaint to the Sub Registrar on 31.07.2012 and being aggrieved by the inaction on the part of the Sub Registrar, she has filed the Writ Petition in W.P.No.18517 of 2015 seeking Mandamus to enquire her complaint and pass necessary orders, pursuant to the circular No.67 dated 03.11.2011.

3. In the said Writ Petition, this Court, while disposing the Writ Petition has directed the District Registrar to consider the petitioner's complaint dated 31.07.2012 with reference to Circular No.67, dated 03.11.2011 and pass

appropriate orders within a period of of eight weeks, from the date of receipt of a copy of this order. As a result, the District Registrar has conducted enquiry on 11.09.2018 and after affording opportunity to the parties concerned, holding that the Power of Attorney relied for registration of sale deed is forged document, directed the Sub Registrar, Namakkal, to annul the four documents registered based on the fraudulent power of Attorney deed. While so, the 1st respondent/Inspector General of Registration has recalled his circular No.67/2011, dated 03.11.2011. Thereafter, taking note of the subsequent circulars, the District Registrar, Namakkal, on 09.04.2018 has passed proceedings in செ.மு.ஆ.எண்:294/ஆ5/2018-I, நாள்.19.04.2018 rescinding the earlier annulment of registration effected in view of the District Registrar proceedings dated 11.09.2015. The said order is impugned in this Writ Petition.

4. The contention of the Learned Senior Counsel appearing for the petitioner is that once the order passed based on the circular No.67, dated 03.11.2011 the District Registrar becomes functus officio and the said order dated 11.09.2015 provide for appeal remedy. None of the persons aggrieved has preferred appeal before the Appellate Authorities/Inspector General of Registration, within a period of 60 days. While so, the matter which has already reached finality cannot be revisited by the very same Authority citing withdrawal of Circular No.67 of 2011. Particularly, the Learned Counsel would submit that the circular issued subsequently on 09.04.2018 can have only prospective effect and not retrospective effect of action taken prior to his withdrawal of Circular No.67 of 2011.

5. Per contra, the learned Special Government Pleader appearing for the respondents 1 to 3 would submit that, in paragraph No.4 of the circular dated 09.04.2018, it has been categorically stated that all orders passed pursuant to circular No.67 of 2011, shall be deemed to be withdrawn. Therefore, in tune with the said circular, the District Registrar, withdrawn the earlier order dated 11.09.2015 and the rescinding of the annulment order is recorded in Index-II. Therefore, there is no illegality or error in the order impugned.

6. The Learned Counsel appearing for the respondents 4 to 8 would submit that, the order of District Registrar passed on 11.09.2015 has been withdrawn by virtue of the subsequent circular dated 09.04.2018. The petitioner herein has no locus to sustain this Writ Petition. Further, it is also submitted by the Learned Counsel for the Private respondents that, the issue now been seized by the Civil Court and cases are pending before the District Munsif Court, Namakkal.

7. It is the case where on specific allegation of fraudulent registration of documents being proved in enquiry, documents were cancelled after a detailed enquiry conducted by the District Registrar. In the said order, the District Registrar has found that the Notary Public who has alleged to have attested the Power of Attorney document at Malaysia has given a statement that the attestation and signatures does not belongs to him and it has been forged without his knowledge. Likewise, the Commissioner of Oath has also stated that, he is not conversant with Tamil language and he did not witness the execution of aforesaid general power of attorney document. The Magistrate Court at Cameron has also said that the document dated 17.07.2013 and letter dated 06.06.2012 were not issued by the said Magistrate Court, Cameron, Highland. So based on the documentary evidence as well as on examination of witnesses, the District Registrar has held that the Power of Attorney document is a forged document. The four documents which has been registered based on the said Power of Attorney deed, were canceled as a consequence. In such circumstances, the role of the District Registrar does not stop with annulling the documents but also he is empowered under Section 83 of the Indian Registration Act to commence prosecution.

8. In this case, the District Registrar while passing the order on 11.09.2015, annulled those documents but has not proceeded further. Now, the District Registrar, on 11.09.2017 has revisited and annulment order and has rescinded the same citing the subsequent circular.

9. According to the Special Government Pleader representing for Registration Department would submit that, the entry in Index-II will sufficiently take care of the petitioner's interest. Even if it is so, the Registration Department cannot turn a nelson eye to the fraudulent act committed, while presenting the document. Once there is a finding of fraudulent registration, the natural corollary is that, the Authority should proceed under Section 83 of the Indian Registration Act. In this case, surprisingly the Registration Department has not proceeded further.

10. Therefore, this Court is of the view that the Sub Registrar, Namakkal, shall exercise his power under Section 83 of Indian Registration Act and proceed in accordance with law. In so far as the rescinding the annulment order, as pointed out by the Special Government Pleader for the respondents 1 to 3, the effect of the document registered fraudulently is in effect nullified by the entry made in Index-II. The recalling of circular 67 and subsequent circulars of the I.G of Registration

is pursuant to the judgment of the Hon'ble Supreme Court in respect of the power of the registering authorities to cancel a registered deed. Hence, no further deliberation is required in this regard.

11. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Inspector General of Registration,
Santhome, Chennai - 600 028.
2. The District Registrar,
Namakkal District.
3. The Joint Sub Registrar No.1,
Namakkal.

+1cc to Mr.D.Sathyaraj, Advocate, S.R.No.97994
+1cc to Mr.V.K.Vijayaragavan, Advocate, S.R.No.97803
+1cc to the Government Pleader, S.R.No.98431

W.P.No.1550 of 2019

KK(CO)
CS/02/01/2020