

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.4315 of 2016
and W.M.P.No.3667 of 2016

1. Jitesh Kumar
2. N.Dhanraj Kochar ... Petitioners

Vs.

1. The Sub Registrar,
Ambattur (District Registrar Cadre),
Ambattur-600 053.
2. The District Registrar (Administration),
Chennai Central, Bharathi Salai,
Chennai-600 011.
3. R.Paneerselvam Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in her proceedings bearing No.189/2015 dated 21.07.2015 quash the same and consequently direct the first respondent to include in the registration records of the first respondent the order of this Court in the above writ petition so quashing the said order of the first respondent bearing No.189/2015 dated 21.07.2015.

For Petitioners: Mr.PL.Narayanan

For Respondents: Mr.T.M.Pappiah,
Special Government Pleader for RR1 & 2
Mr.Vaibhav R.Venkatesh
for M/s.Nithyesh and Vaibhav for R3

O R D E R

The writ petition is filed challenging the order passed by the first respondent Sub Registrar, Ambattur, in proceedings No.189/2015, dated 21.07.2015.

2. The third respondent is the owner of an extent of two acres comprised in Survey Nos.141/2 (Part), 141/4A (Part), 141/4B (Part) and 141/3A together with building, which is known as Rohini Movie Park Theatre situated in Chennai. While so, the encumbrance certificate filed by the third respondent reflected a Power of Attorney registered as document No.161/14, dated 08.08.2014 for the above mentioned property, which was said to be executed in favour of the first petitioner, even without the knowledge of the original owner.

3. According to the third respondent - owner, the Power of Attorney is a forged one and it is void ab initio. The third respondent further stated that the Power of Attorney document does not even mention the permanent address of the third respondent, but mentions his address as temporarily camping at 42, Defence Colony, Delhi. As it was found out that the signature of the third respondent was forged, a detailed representation was sent to the authorities concerned and pursuant to the direction given by this Court in W.P.No.12481 of 2015, an enquiry was conducted by the first respondent. It is stated that in the said enquiry, despite service of notice, the petitioners had not participated and only the third respondent had participated. After the enquiry, the impugned order came to be passed, wherein, it was held that the Power of Attorney said to have been executed by the third respondent in favour of the first petitioner is a fraudulent document and no right or authority is given to the first petitioner.

4. Aggrieved by the said order, the above writ petition is filed by the petitioners.

5. Learned counsel for the third respondent contended that Section 34-B was inserted as per the Tamil Nadu amendment Act 29 of 2012, which mandates that "no document of Power of Attorney relating to immovable property shall be registered, unless passport size photographs and finger prints of the principal, the agent and of the identifying witnesses are affixed to the document and the agent has also signed such document". Relying on the said provision, it is contended that since the alleged instrument does not contain the photograph of the third respondent, it is not a registered document in the eye of law.

6. Be that as it may, as the question of fraud and forgery is involved in the execution of the disputed Power of Attorney, it is open to the parties to approach the appropriate forum and establish their respective rights and also prove the validity and genuineness of the said document and the same cannot be

decided by this Court exercising power under Article 226 of the Constitution, which is also fairly conceded by the learned counsel for the petitioner.

7. For the foregoing reasons, this writ petition is dismissed. No costs. Consequently, W.M.P.No.3367 of 2016 is closed. It is open to the parties to resort to any remedy under the common law, if they are so advised.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Sub Registrar,
Ambattur (District Registrar Cadre),
Ambattur-600 053.
2. The District Registrar (Administration),
Chennai Central, Bharathi Salai,
Chennai-600 011.

+1cc to Mr.P.L.Narayanan, Advocate Sr.26179
+2cc to M/S.Nithyaesh & Vaibhav, Advocate Sr.26029
+1cc to the Government Pleader Sr.26854

W.P.No.4315 of 2016

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srg 3/5/2019

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