



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.04.2019

Pronounced on : 14.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD)No.2653 of 2019

and

WMP (MD)Nos.1993, 3861 & 4706 of 2019

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1.C.Rangaraj

2.C.Palanisamy

... Petitioners

Vs.

1.The Inspector General of Registration,
Santhome, Chennai - 600 004.

2.The Deputy Inspector General of Registration,
2nd Floor, Government Multi Purpose
Office Complex,
Kajamalai, Tiruchirappalli - 620 020.

3.The District Registrar,
Administration, Pudukkottai.

4.Ramakrishnan

5.Sannasi

... Respondents

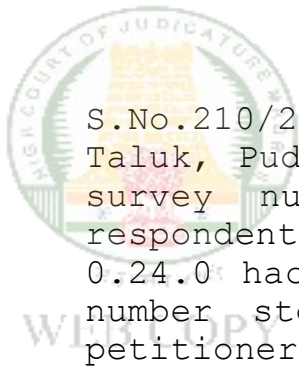
PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the proceedings bearing No.7375/E/2018 dated 08.01.2019 of the second respondent herein and quash the same.

For petitioners : Mr.ARL.Sundaresan, Senior counsel
for M/s.AL.Ganthimathi

For Respondents : Mr.V.Shankaranarayanan,
Senior Counsel for Mr.Nithyesh Natraj
for R4
Mr.M.Murugan,
Government Advocate for R1 to R3

ORDER

One Arivazhagan and Sannasi (5th respondent in this writ petition) executed sale deed dated 18.06.2005 registered on the file of the Sub Registrar Office, Annavasal as document No.1192 of 2005 on 27.07.2005 in favour of Ramakrishnan (4th respondent herein) conveying inter alia, the immovable property comprised in

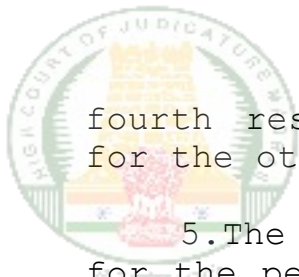


S.No.210/2B1 measuring 0.24.0 hac in Melur Vilage in Kulathur Taluk, Pudukottai District. The total extent of land in the said survey number is 0.37.0 hac. The grievance of the fourth respondent, namely, Ramakrishnan was that even though he owned 0.24.0 hac out of 0.37.0 hac in S.No.210/2B1, the entire survey number stood solely in the name of Shri.Rangaraj (the first petitioner herein) in the revenue records. He found out that even though Sannasi was a party to the sale deed dated 18.06.2005, he subsequently executed sale deed dated 13.07.2006 (document no.1135 of 2006) in which he sold the entire 0.37.0 hac in S.No.210/2B1 in favour of Thiru.Rangaraj, the first petitioner herein.

2.Having come to know of this, he submitted a petition dated 10.08.2008 before the Revenue Divisional Officer, Illuppur. The RDO Illuppur conducted an enquiry in the matter. By proceedings dated 05.10.2018, he directed the Tahsildar, Kulathur to make changes in the revenue records so that the names of both Ramakrishnan as well as Rangaraj can figure as joint pattadhars in S.No.210/2B1. Thereafter, the fourth respondent herein submitted a petition dated 16.10.2018 before the District Registrar, Pudukkottai pointing out the conduct of Sannasi and Rangaraj. The fourth respondent herein wanted the District Registrar, Pudukkottai to take action in the matter in terms of the Circular bearing Letter No.41530/U1/2017 dated 08.11.2017. The District Registrar, Trichirappalli, the third respondent herein by order dated 07.12.2018 relegated the applicant Ramakrishnan to move the jurisdictional civil court. Aggrieved by the same, he preferred an appeal before the Deputy Inspector General of Registration, Trichirappalli (R2 herein). After enquiring the parties concerned, the second respondent passed the impugned order dated 08.01.2019 in proceedings bearing No.7375/E/2018 holding that the document in favour of Ramakrishnan/the fourth respondent is a genuine transaction and that the one executed in favour of Thiru.C.Rangaraj is fraudulent. He issued a direction that R4 herein will be entitled to deal with the property in question as a genuine owner. He directed the registering officer to initiate criminal prosecution in terms of the Circular dated 31.07.2018 in Letter No.41530/U1/2017 issued by the Inspector General of Registration, Chennai - 600 028. Aggrieved by the same, this writ petition has been filed.

3.This Court by order dated 07.02.2019 granted interim stay of the impugned order. To vacate the same, the third respondent has filed WMP(MD)No.4706 of 2019. The fourth respondent herein has also filed a miscellaneous petition to vacate the stay granted by this Court.

4.Heard the learned Senior Counsel appearing for the writ petitioners and the learned Senior Counsel appearing for the

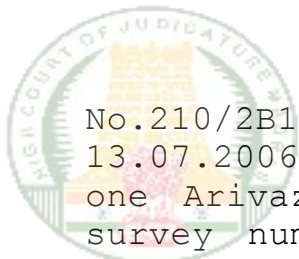


fourth respondent and the learned Government Advocate appearing for the other respondents.

5.The core argument of the learned Senior Counsel appearing for the petitioners is that the impugned proceedings are wholly lacking in jurisdiction. According to him, the registering authority has no power to go into disputed questions of right, title and interest to immovable property. By issuing the impugned declaration characterizing one transaction as genuine and the other as fraudulent, the registering authority has usurped the jurisdiction of the civil court. According to him, the impugned order is not in consonance with the Registration Act and the rules framed thereunder. He wanted this Court to restore the order passed by the third respondent relegating the parties to move the civil court. He would further contend that the second respondent could not have directed the third respondent to lodge a police complaint. He wanted this Court to bear in mind that the first petitioner herein is only a innocent and bonafide purchaser of the property for valuable consideration. The document in question was registered way back in the year 2006 and several subsequent transactions have taken place on that basis. He would also point out that the offending document belonged not only to Survey No.210/2B1 but also two other survey numbers. There is no dispute regarding other two survey numbers. Therefore, the entire document could not have been characterized as fraudulent.

6.The learned Senior Counsel appearing for the fourth respondent submitted that the State has been witnessing an increase in the number of fraudulent registrations and that land grabbers are having a field day. Alarmed by the said trend, the Inspector General of Registration, Chennai issued Circular No.67 dated 03.11.2011 conferring powers to District Registrars to annul even registered documents on grounds of fraud and impersonation. The constitutional validity of the said circular was put to challenge. The same was repelled by the Madurai Bench of Madras High Court in the decision reported in **2014 (4) CTC 637 (Ramasaamy vs. State of Tamil nadu)**. Of course, the said circular was later withdrawn. But then, invoking Section 69 of the Registration Act, 1908, subsequent circulars have been issued by the Inspector General of Registration, Chennai. The one holding the field as of now is Letter No.41530/U1/2017 dated 31.07.2018. The second respondent has acted strictly in terms of the aforesaid circular dated 31.07.2018 and that therefore, his action cannot be questioned as wanting in jurisdiction.

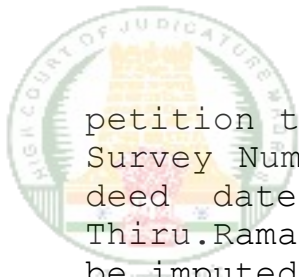
7.The learned Senior Counsel for the fourth respondent would point out that the facts are beyond dispute. The petitioners are tracing the title only from Sannasi. The first petitioner **Thirai C. Ramasamy** has purchased 0.37.0 hac of land in Survey



No.210/2B1 only from Thiru.Sannasi vide sale deed dated 13.07.2006. Even prior thereto, the very same Sannasi along with one Arivazhagan had sold 0.24.0 hac of land in the very same survey number to the fourth respondent herein. Therefore, on 13.07.2006 when Sannasi executed a sale deed in favour of the first writ petitioner herein, he did not have any title over 0.24.0 hac in Survey No.210/2B1. The learned Senior Counsel appearing for the fourth respondent therefore wanted this Court to sustain the impugned order and dismiss this writ petition as devoid of merits.

8.The learned Government counsel appearing on behalf of R1 to R3 adopted the submissions of the learned Senior Counsel for the fourth respondent. Even though the fifth respondent has been served, there is no appearance on his side. In fact, Thiru.Sannasi appeared in the enquiry before the registering authorities and did not challenge the stand taken by the fourth respondent herein namely Ramakrishnan.

9.I carefully considered the rival contentions. One usual comment that we have heard for long is that if one can pay the requisite stamp duty, any property including LIC building (the great landmark of Chennai) and the High Court can be made the subject matter of sale and that the registering authority cannot refuse to register the document on the ground that the executant has no title over the same. Enquiry into title of the executant is forbidden for the registering authority. To borrow the expression of Hon'ble Mr.Justice V.Ramasubramanian, this was the consistent position laid down by the courts and that a different tune was sung only in **S.Rangarajan vs. the District Registrar, Trichirappalli (2009) 3 MLJ 172**. It is true that as contended by the learned Senior Counsel appearing for the petitioners the sale deed dated 18.06.2005 standing in the name of Thiru.K.Ramakrishnan does have corrections, alterations and inter lineations. The sale deed as originally typed contained only four survey numbers. Survey Number 210/2B1 was included as the fifth item by writing in hand. Arivazhagan figured as the sole vendor. Sannasi became a co-vendor only by a handwritten inclusion. But on this account, the genuineness of the document cannot be doubted. The second respondent in the impugned order had called upon the first petitioner C.Rangaraj to produce a copy of the encumbrance certificate which he would have obtained prior to purchasing the property in question from Sannasi. The second respondent wanted to satisfy himself that Thiru.C.Rangaraj was a genuine and bonafide purchaser. It is interesting to note that even after sufficient opportunity, Thiru.Rangaraj did not produce the encumbrance certificate. Even before this court, the encumbrance certificate was not produced by the petitioners. Therefore, it would be safe to assume for the purpose of disposal of this writ



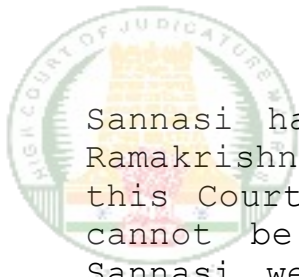
petition that the first petitioner purchased 0.37.0 hac of land in Survey Number.210/2B1 with the knowledge of the execution of sale deed dated 18.06.2005 in the name of the fourth respondent Thiru.Ramakrishnan. In any event, such a knowledge will have to be imputed to the first petitioner.

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10. Section 7 of the Transfer of Property Act states that every person competent to contract and entitled to transferable property, or authorised to dispose off transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and the manner, allowed and prescribed by any law for the time being in force. Applying the aforesaid Section 7 of the Transfer of Property Act, one can easily come to the conclusion that Sannasi was entitled to transfer only 0.13.0 hac of land in Survey No.210/2B1 and not the entire 0.37.0 hac of land, because, he had already divested his title in respect of 0.24.0 hac of land in that survey number.

11. It is seen that the land in question was an agricultural land. It has been described as Punjai in the schedule to the sale deeds. Therefore, as per Section 5(1) of the Tamil Nadu Patta Pass Book Act, 1983, no document relating to transfer of any land by sale, gift, mortgage, exchange, settlement or otherwise shall be registered by the registering authority, unless the patta pass book relating to such land is produced before such registering authority. Of course, it has subsequently been instructed that it is enough if the registrant produces a copy of the computerised chitta extract. In other words, in the case of agricultural land, the document relating to transfer cannot be registered unless the revenue record is produced before the registering authority. The validity of this requirement was sustained in the decision reported in **2012 (2) CTC 289 [Rajambal vs. The Inspector General (Registration)]**. If Ramakrishnan had got his name entered in the revenue record immediately after his purchase, the subsequent scenario could have probably been averted. Sannasi felt emboldened to sell the entire 0.37.0 hac as the patta continued to reflect his name.

12. Section 22(A) of the Registration Act, 1908 states that the registering officer shall refuse to register certain classes of documents. One of them is the instrument relating to cancellation of sale deeds without the consent of the person claiming under the said sale deed. In this case, Thiru.Sannasi after conveying a portion of the land in Survey No.210/2B1 has chosen to convey the entire extent of land comprised in that survey number in favour of C.Rangaraj/the first petitioner herein. He has thus cast a shadow on the sale deed in favour of Ramakrishnan as far as his portion is concerned. Of course,



Sannasi had not directly cancelled the sale deed in favour of Ramakrishnan insofar as 0.24.0 hac of land is concerned. But, this Court will be justified in invoking the principle that what cannot be done directly cannot be done indirectly also. If Sannasi were to cancel the sale deed dated 18.06.2005, he will have to necessarily get the consent of Ramakrishnan, the fourth respondent. This requirement cannot be overcome by way of executing another sale deed in favour of the first petitioner by including the portion that had been already sold to Ramakrishnan.

13. Viewed in this perspective, the document dated 13.07.2006 is hit by Section 22(A)(3) of the Registration Act, 1908. But, in this case, either due to oversight or some other reason, the registering authority had registered document No.1135 of 2006 executed by Sannasi in favour of the first petitioner Thiru.C.Rangaraj. When the flaw was pointed out, the registering authority was bound to remedy the situation. Of course, as held in **Satya Pal Anand vs. State of M.P (2016) 10 SCC 767**, the registering authority cannot cancel the registration of a document. That would be the function of the competent civil court. But then, the question arises, who should go to the civil court and whose rights should be protected in the interregnum. I am of the view that it is only the petitioners who must go to the civil court and not Thiru.Ramakrishnan. If the second respondent has not passed the impugned order, Thiru.Ramakrishnan will not be able to deal with the property in question at all. That is why, to enable him to deal with the property and to disable the petitioners, the impugned endorsements have been ordered to be incorporated in the registration records.

14. The contention that the second respondent has acted illegally has to be rejected. This is because, the second respondent has only invoked the powers conferred on him vide circular dated 31.07.2018 in Letter No.41530/U1/2017. I carefully went through the contents of the affidavit filed in support of this writ petition. There is no challenge to the validity of the said circular. The circular dated 31.07.2018 was issued by the Inspector General of Registration, Chennai pursuant to the statutory power conferred on him under Section 69 of the Registration Act, 1908. Therefore, this Court will have to necessarily proceed on the premise that the circular dated 31.07.2018 is holding the field. Hence, the action of the second respondent cannot be characterised as illegal or lacking in jurisdiction.

15. The State Government does not register the documents gratis. Registration fees is fixed as per section 78 of the Registration Act, 1908. This is collected apart from stamp duty. Therefore, as observed by Hon'ble Mr.Justice K.Chandru, the



registering authority cannot act like a post office and register any document that is dumped before him. Section 7 of the Transfer of Property Act, lays down that there must be entitlement to transferable property. If there is manifest lack of title and the same is apparent, the registering authority cannot register the document. While it is no part of his duty to enquire into title, law does not require him to remain blind to the obvious. Of course, he cannot undertake a full fledged exploration of the factual matrix. But then, he can be a peeping Tom.

16.The great jurist Aharon Barak says that law is an integral whole. To quote Shelly, nothing in this world is single and all things by law divine in one another's being mingle. Registration Act is not a standalone legislation. Its interpretation must be in sync with Section 7 of the Transfer of Property Act. An administrative authority while discharging his functions, cannot be mechanical. He must be mindful of the substantive rights secured by the other statutes. If the registering authority were to indiscriminately register the documents executed by those manifestly lacking title, that would seriously undermine legitimate rights. State is obliged to render this minimum service for the revenue received. In any event, the registering authority will not have the final say. It is the civil court that will have the last laugh.

17.The Hon'ble Division Bench of the Madras High Court in the decision reported in AIR 2010 Madras 135 (Pandurangan vs. the Sub Registrar, Reddiyarpalayam, Pondyicherry) held that the registering authority is required to act in a judicious manner so as to prevent any fraud from being committed by any party while registering any document. The object of the Act is to secure the interest of the parties to the document.

18.However, there is considerable justification in the contention of the petitioners' Senior Counsel that the entire document cannot be characterised as a fraudulent one. The document pertains not only to S.No.210/2B1 but also to two other survey numbers. Therefore, the registering authority will have to be directed to confine their endorsement only in respect of 0.24.0 hac of land in S.No.210/2B1. The direction to register a criminal case does not appear to be warranted. There is no impersonation or forgery. Hence, the registering authority would do well to let the affected party to set the criminal law in motion. The impugned order is interfered with only to this limited extent. The second respondent shall issue a fresh proceeding on the lines indicated above.



19.The writ petition is partly allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)

Skm

To

1.The Inspector General of Registration,
Santhome, Chennai - 600 004.

2.The Deputy Inspector General of Registration,
2nd Floor, Government Multi Purpose
Office Complex,
Kajamalai, Tiruchirappalli - 620 020.

3.The District Registrar,
Administration, Pudukkottai.

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-91717[F] dated
14/10/2019)

+1 CC to M/s.NITHYAESH NATRAJ, Advocate (SR-91727[F] dated
14/10/2019)

Order made in
WP (MD) Nos.2653 of 2019
and
WMP (MD) Nos.1993, 3861 & 4706 of 2019
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