

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 30460 of 2019
and

W.M.P. Nos. 30474 and 30479 of 2019

1. A. Somasundaram

2. A. Viswanathan Petitioners

-vs-

1. The Inspector General of Registration,
Santhome High Road,
Raja Annamalai Puram,
Chennai - 600 004.

2. The Sub-Registrar,
Mylapore,
Chennai - 600 004.

3. Mangalam
(R3 deleted vide order dated 22.11.2019
in W.M.P. No. 31461 of 2019)

4. E.R. Tiripura Sundari

5. M. Shanmugam

6. M. Kannappan

7. C. Sabapathy

8. M. Meenakshi Sundaram Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the registered documents namely, (i) Registered cancellation of settlement deed No. 77 of 2012 dated 13.01.2012; (ii) Registered settlement deed No. 831 of 2012 dated 29.03.2012; (iii) Registered settlement deed No. 2189 of 2017 dated 14.07.2017; and (iv) Registered settlement deed No. 2190 dated 14.07.2017 on the file

of the Second Respondent and quash the same and consequently direct the First and Second Respondents to delete the entries in their records in respect of the above documents (i), (ii), (iii), and (iv) relating to the property measuring about 2731 sq. ft. situate in survey no. 2132/1, Block No. 44, Mylapore Village, Mylapore-Triplicane Taluk, Chennai and a house constructed thereon.

For Petitioners: Mr. M. Naraayanaswamy

For Respondents: Mr. B. Kannan,
Government Advocate (for R1 and R2)

O R D E R

Heard Mr. M. Naraayanaswamy, Learned Counsel for the Petitioners and Mr. B. Kannan, Learned Government Advocate appearing for the First and Second Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed challenging the records relating to the registered documents, viz., registered cancellation of settlement deed dated 13.01.2012 registered as Document No. 77 of 2012; settlement deed dated 29.03.2012 registered as Document No. 831 of 2012; settlement deed dated 14.07.2017 registered as Document No. 2189 of 2017; and settlement deed dated 14.07.2017 registered as Document No. 2190 of 2017 on the file of the Second Respondent and to consequently direct the First and Second Respondents to delete the entries in their records in respect of the aforesaid documents relating to the property measuring to an extent of 2731 sq. ft. situated at Survey No. 2132/1, Block No. 44, Mylapore Village, Mylapore-Triplicane Taluk, Chennai.

3. Having regard to the aforesaid relief sought, it would be necessary to refer to Section 31 of the Specific Relief Act, 1963, which reads as follows:-

"31. When cancellation may be ordered:-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered;

and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

The said statutory provision in no uncertain terms enables the Petitioners to institute suit before the jurisdictional Civil Court for the relief that has been sought in this Writ Petition.

4. There is no explanation from the Petitioners in the affidavit filed in support of the Writ Petition for not having resorted to that efficacious remedy. In this backdrop, it may be recapitulated here that the Hon'ble Supreme Court of India in CCE -vs- Dunlop India Limited [(1985) 1 SCC 260], has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction, as follows:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

5. That apart, the nature of disputes sought to be agitated by the Petitioners in the Writ Petition involve various disputed question of facts which require recording of evidence of the parties on their respective claims, which are absolutely private in character and does not have any element of public law involved, which could be decided in summary proceedings under Article 226 of the Constitution.

6. In this regard, reference may be made to the decision of the Division Bench of this Court in P. Rukamani -vs- Amudhavalli (Judgment dated 17.07.2019 in W.A. No. 229 of 2018), in which the question whether Writ Petition under Article 226 of the Constitution challenging the validity of the registration of documents made under the Registration Act, 1908, could be entertained came up for consideration, and it has been held as follows:-

"9. Considering the submissions made at the bar, we are of the clear opinion that in a case relating to execution of a conveyance deed or a sale deed or cancellation thereof, if there is any dispute about the rights of the parties involved therein, the only appropriate remedy for the parties is to approach the Civil Court by way of civil suit. The act of registration of a document is a consequential act which will be subject to decree of Civil Court in case such a dispute arises.

10. We are of the clear opinion that such a relief could not have been sought or granted in Writ Jurisdiction under Article 226 of the Constitution of India. The civil rights of the parties based on relevant evidence can only be determined by a Civil Court by a competent Civil Court and not by the writ Court under Article 226 of the Constitution of India. Such private rights of the parties cannot be made a subject matter of writ jurisdiction. The writ petitions under Article 226 of the Constitution of India lie only against the State or instrumentality of the State as defined under Article 12 of the Constitution of India. Therefore, such determination of private civil rights of the parties cannot be made subject matter of writ petition."

7. In the result, the Writ Petition is dismissed. It is made clear that no view has been expressed by this Court on the correctness or entitlement on the merits of the claim made by the Petitioners. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

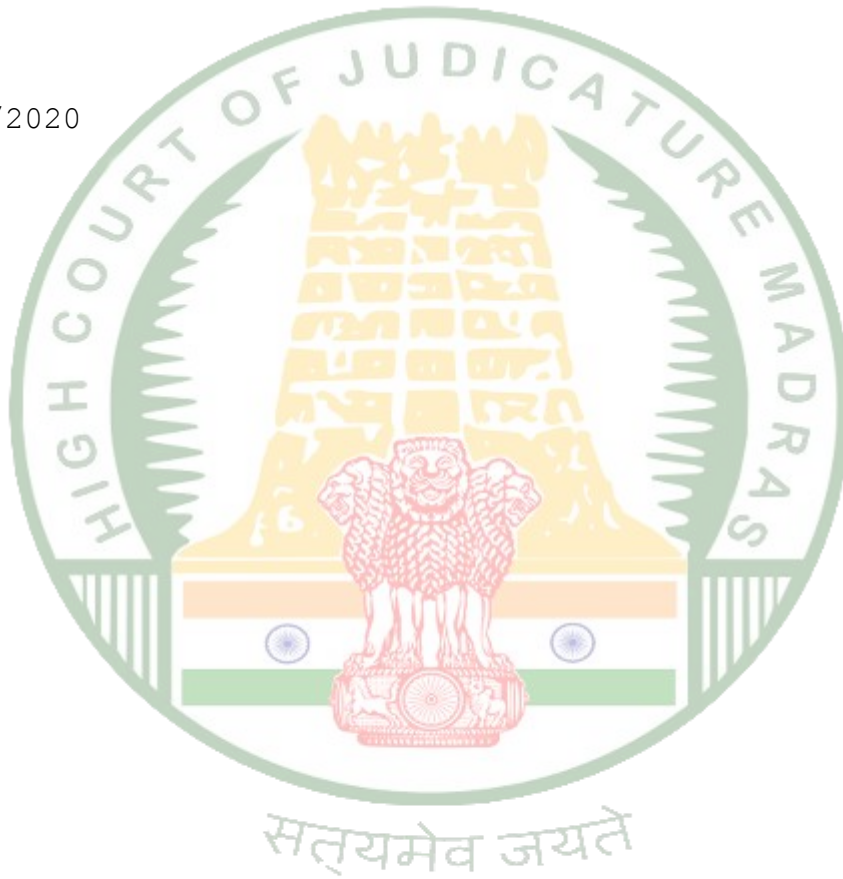
1. The Inspector General of Registration,
Santhome High Road,
Raja Annamalai Puram,
Chennai - 600 004.

2. The Sub-Registrar,
Mylapore,
Chennai - 600 004.

+1cc to the Government Pleader Sr.3536

W.P. No. 34060 of 2019

rk[col
srg 06/03/2020



WEB COPY