



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2020

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.23718 of 2019

WEB COPY

P.Ramesh

... Petitioner

vs.

1.The Inspector General of Registration,
No.100, Santhome High Road, Chennai.

2.The District Registrar (Admin),
Thanjavur District.

3.The Sub Registrar,
Thiruvaiyaru, Thanjavur District.

4.B.Manikandan

5.B.Arun Kumar

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the third respondent to remove the entry of Gift Deed, dated 13.06.2013 having Doc.No.872/2013 in the light of proceedings of the second respondent in Ref.No.Mu.Mu.No.517/A1/2019, dated 26.06.2019.

For Petitioner :Mr.A.Sivasubramanian

For R1 to R3 : Mr.V.Anand

Government Advocate

For R4 and R5 :Mr.S.Sundarapandian

ORDER

This Writ Petition is filed for issuing a Writ of Mandamus to direct the third respondent to remove the entry of Gift Deed, dated 13.06.2013 having Doc.No.872/2013 in the light of proceedings of the second respondent in Ref.No.Mu.Mu.No.517/A1/2019, dated 26.06.2019.

2.The petitioner has married one Vigneshwari on 15.11.2012 and that the said Vigneshwari was served as Nurse in Military. A gift deed alleged to have been executed by the petitioner's wife was registered on 13.06.2013. It is not in dispute that the property was purchased by the petitioner's wife on 06.12.2011. It is stated that after purchasing the land, the petitioner's wife has constructed a house by availing loan by mortgaging the said



property. It is further stated that all of a sudden, the petitioner's wife died in 2018.

3. When the petitioner came to know about the registration of gift deed, it appears that he has collected some information about the impersonation of petitioner's wife, while registering the document by the Thiruvaiyaru Sub Registrar Office. The second respondent, by proceedings, dated 26.06.2019, held that the transaction, dated 13.06.2013, namely, the settlement deed, stated to have been executed by the petitioner's wife in favour of respondents 4 and 5 is a fraudulent transaction by committing forgery and that criminal prosecution should be taken as per Sections 82 and 83 of the Registration Act. The present Writ Petition is filed to direct the third respondent to remove the entry of gift deed, dated 13.06.2013 in the light of the proceedings of the second respondent, dated 26.06.2019.

4. The learned Counsel for the respondents 4 and 5 has filed a counter affidavit stating that the order of second respondent has been challenged by filing a statutory appeal before the Deputy Inspector General of Registration, Thanjavur, dated 10.07.2019. Since a statutory appeal has been preferred as against the order of second respondent and the same is pending, the learned Counsel for the respondents 4 and 5 submitted that the writ petition cannot be entertained before the disposal of the appeal. The learned Counsel also pointed out some facts and documents to support his stand that the gift deed was executed by their sister and that the second respondent has relied upon certain documents produced by the writ petitioner ignoring the truth.

5. The learned Counsel for the respondents 4 and 5 has produced before this Courts, the information furnished by the Defence Department to support his statement. Since an appeal is preferred by the respondents 4 and 5 as against the order of second respondent, the Writ Petition, which is in the nature of implementing the direction of order of second respondent, dated 26.06.2016, may not be proper. It is also noted that there cannot be an unilateral cancellation of registered instrument by registering authority, even if it is fraudulent. Cancellation of registered instrument is not within the jurisdiction of the Registering Officer under the Registration Act. However, if a document is held to be fraudulent, it is open to the registering officer to ignore the document, so as to permit the rightful owner of the property to deal with the property without any hindrance.

6. Accordingly, this Writ Petition is closed with an observation and liberty to the petitioner to approach the authorities in case appeal preferred by the respondents 4 and 5 is decided against respondents 4 and 5 and seek registration of the order declaring the registration as fraudulent. The order passed by the second respondent or by the appellate authority can be taken for



considering the petitioner's representation to permit him to enter into transaction, in case the order of second respondent is confirmed by appellate authority in the appeal preferred by the respondents 4 and 5. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai.

2.The District Registrar (Admin),
Thanjavur District.

3.The Sub Registrar,
Thiruvaiyaru, Thanjavur District.

+1 CC to M/s.SUNDARAPANDIAN, Advocate (SR-3947[F]

+1 CC to M/s.A.SIVASUBRAMANIAN, Advocate (SR-4358[F]

+1 CC to M/s.SPL.GP (SR-4407[F] dated 03/02/2020)

W.P.(MD)No.23718 of 2019
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SMA /13/02/20202/3P/7C