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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.06.2020

C O R A M

THE HONOURABLE MR. JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 215 of 2016

and

W.M.P. (MD) No. 2284 of 2016

Maniyam

.... Petitioner

-vs-

1. The Inspector General of Registration,
Office of the Inspector General of Registration,
Santhome, Chennai-28.

2. The District Registrar,
The District Registrar Office,
Cantonment, Trichy-1.

3. The Sub Registrar,
Joint-III, Town Hall,
Trichy-2.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Mandamus, to direct the First Respondent to take action against the Third Respondent of forgery and fraudulent through impersonation and production of false documents and events as per the circular No.67, dated 03.11.2011 C.No.52338/C1/2011 pursuant to the representation dated 24.06.2015 consequently, directing to cancel all the sale deeds which was registered by the Third Respondent relating to the property in door No.28, Poosari Street, Chinthanmani, Trichy Town, Taluk and District.

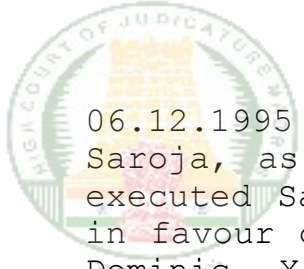
For Petitioner : Mr. S.Krishnamoorthy

For Respondents : Mr. J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

Heard Mr. S.Krishnamoorthy, Learned Counsel for the Petitioner and Mr. J.Gunaseelan Muthiah, Learned Special Government Pleader, appearing for the Respondents through video-conference and perused the materials placed on record, apart from the pleadings of the parties.

2. According to the Petitioner, property measuring an extent of 730 square feet in T.S. No. 1250 Block No. 22 Door No. 28, Poosari Street, Chinthanmani, Trichy Town, Trichy District belongs to his father, who died on 07.07.1996 and the property has devolved upon him. While so, one Chinnappan had executed a Gift Deed dated



06.12.1995 under Document No. 1913 of 1995 in favour his daughter Saroja, as if the aforesaid property belonged to him. She in turn executed Sale Deed dated 08.03.2010 under document No. 711 of 2010 in favour of one Marimuthu and Muthulakshmi through her Power Agent Dominic Xavier Selvam. Subsequently, the said Marimuthu and Muthulakshmi executed a Sale Deed dated 08.07.2011 under document No. 2858 of 2011 in favour of one Kannan. The Petitioner, on coming to know about the aforesaid transactions, had made a representation dated 24.06.2015 to the First Respondent seeking to cancel the registration of those documents and take action against the concerned persons, but there has not been any response for the same. Aggrieved thereby, the Petitioner has filed this Writ Petition.

3. Having regard to the relief sought by the Petitioner, 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 Petitioner to institute suit before the jurisdictional Civil Court for the relief that he wants. In this regard, reference may be made to the decision of the Hon'ble Supreme Court of India in **Satya Pal Anand -vs- State of Madhya Pradesh** [(2016) 10 SCC 767], in which it has been held as follows:-

"40.At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenged the registration and validity of the document before the Civil Court...."

There is no explanation from the Petitioner 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."

4. That apart, the nature of disputes sought to be agitated by the Petitioner 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. In this regard, reference may be made to the decision of the Division Bench of this Court in **P.Rukumani -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."

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5. On a conspectus of the aforesaid binding decisions viz-a-viz statutory provisions, the following legal position would emerge:-

- (i) it is not open to the Registering Authority to cancel the registration of a document which has already taken place, even if there is some irregularity committed during the registration of the document;
- (ii) the aggrieved party has to challenge the validity and registration of the document before the jurisdictional Civil Court invoking Section 31 of the Specific Relief Act, 1963; and
- (iii) if the jurisdictional Civil Court finds in such suit instituted that the registered instrument is void, it shall send a copy of that decree to the Registering Authority, who shall note on the copy of the instrument contained in its books the fact of its cancellation.

6. 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 Petitioner. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

ta/sj

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Inspector General of Registration,
<https://hcservices.ecourts.gov.in/hcservices/>
Office of the Inspector General of Registration,
Santhome, Chennai-28.



2.The District Registrar,
The District Registrar Office,
Cantonment, Trichy-1.

3.The Sub Registrar,
Joint-III, Town Hall,
Trichy-2.

+1 CC to SPL GP (SR-13085[F] dated 04/06/2020)

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