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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.8719 of 2020

V.S.Prabhu

..Petitioner

Vs.

1. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.
2. The District Registrar (Administration)
District Registrar Office,
Erode.
3. The Sub Registrar,
Avalpoondurai Sub Registrar Office,
Erode.
4. S.Shanmugavadivu
5. V.S.Sarvesh Kailasam
6. Chandrasekaran
7. S.N.Chidambaram
8. S.N.Subramaniam
9. Muniraj
10. V.K.Swaminathan

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records pertaining to the orders of the second respondent in Na.Ka.No.4571/A2/2019, dated 16.10.2019, and to quash the same as illegal, incompetent and consequently direct the second respondent to conduct enquiry as contemplated under the law by adhering to Principles of Natural Justice and take action against the persons who executed and registered the Power of Attorney document in Doc.No.4861 of 2018 and the Sale Deed in Doc.No.4925 of 2018 as per the Registration Act, 1908.



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For Petitioner : Mr.M.Guruprasad
For Respondents 1 to 3 : Mr.Yogesh Kannadasan
Government Advocate
For Respondents 4 & 5 : Mr.C.Prabakaran
For Respondents 6 to 9 : Mr.C.S.Saravanan

O R D E R

(The case has been heard through video conference)

This writ petition has been filed challenging the order of the second respondent District Registrar, Erode district, declining to conduct an enquiry regarding the Power of Attorney said to have been executed by the respondents 4 and 5 in favour of the 6th respondent and the subsequent Sale Deed executed by the 6th respondent in favour of respondents 7 and 8.

2. According to the petitioner, his grandmother Mrs.K.Maruthapusham, is the absolute owner of certain properties and she died intestate on 16.09.2011, and the petitioner being the grandson of the deceased, K.Maruthapusham through her son Mr.V.K.Sakthivel, is entitled to a share in the property.

3. Further, according to the petitioner, he has also filed a suit for partition and the same is pending. In the meantime, the petitioner came to know that the respondents 4 and 5 created a forged Will said to have been executed by the deceased K.Maruthapusham. Based on the above forged Will, the respondents 4 and 5 executed a Power of Attorney in favour of the sixth respondent, which was duly registered as Document No.4861 of 2018, dated 27.09.2018 by the third respondent. Thereafter, the sixth respondent executed a Sale Deed in Document No.4925 of 2018, dated 28.09.2018, in favour of the respondents 7 and 8 and the respondents 9 and 10 were witness to the execution of the said documents.

4. Further according to the petitioner, after coming to know about the alleged forged Will, he gave a complaint to the police against the respondents 4 to 10 and the same was registered by the District Crime Branch, Erode in Crime No.45 of 2013, for offences punishable under Section 120(b), 420, 464, 465 and 468 of IPC. Thereafter, the accused in the above case also filed a petition before this Court to quash the FIR and the same was dismissed by this Court and a Special Leave Petition filed against the said order was also dismissed by the Hon'ble Supreme Court. The said criminal case has been investigated by the police and a final report has also been filed and it was also taken cognizance and pending as C.C.No.446 of 2019 on the file



of the learned Judicial Magistrate No.II, Erode. All the accused persons also filed petitions to discharge them from the charges, that was also dismissed by the learned Judicial Magistrate, and the criminal case is pending for trial.

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5. According to the petitioner, the above facts clearly shows that the respondents 4 and 5 have committed forgery. In the said circumstances, the petitioner approached the second respondent District Registrar to take action against the respondents 4 to 10 under Section 68 of the Registration Act. That application has been rejected by the District Registrar stating that the dispute regarding the Will is still pending before a competent Court and only after the competent Court decide the genuineness of the Will, the Registrar can take action and that there cannot be two parallel proceedings and therefore the Registrar cannot conduct any enquiry in respect of the said documents. Now challenging the said order, the present writ petition has been filed.

6. Mr.M.Guruprasad, learned counsel appearing for the petitioner would submit that the petitioner's grandmother Mrs.Maruthapushpam was seriously ill at the time of execution of the alleged Will and the respondents 4 and 5 forged the signature of the deceased person and created a Will, using the said Will they alienated the property, in which the petitioner has interest. Now the police also investigated the case and filed a final report stating that the Will is a forged one. In such circumstances, the petitioner approached the District Registrar to take action against the accused persons under Section 68 of the Registration Act. But the District Registrar, without conducting any enquiry and without giving any opportunity to the petitioner rejected the request of the petitioner in total violation of the Principles of Natural Justice. That apart, the second respondent has statutory obligation under Section 68(2) of the Registration Act, and also various circulars issued by the Inspector General of Registration to conduct an enquiry. Hence the order of the second respondent District Registrar is liable to be set aside and the District Registrar may be directed to conduct an enquiry and pass orders after giving opportunity to the petitioner.

7. Per contra, the learned counsel appearing for the respondents 4 to 9 would contend that the respondents 4 and 5 are the wife and son of V.K.Senthil Subramanian who is the son of Mrs.Maruthapushpam. After the demise of V.K.Senthil Subramanian, his property devolved upon his mother Mrs.Maruthapushpam, his wife Mrs.S.Shanmugavadivu (R4) and his son Mr.V.S.Sarvesh Kailasam (R5). According to the learned counsel, Mrs.Maruthapushpam out of love and affection executed a will in favour of the respondents 4 and 5 bequeathing her share

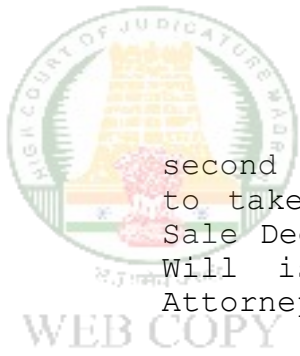


in their favour. The petitioner is the grandson of the deceased Mrs. Maruthapushpam with an evil intent of garbbing the property, filed a complaint against the respondents and now the criminal case is still pending. So far the Will has not been declared as forged one and the District Registrar cannot conduct any enquiry with regard to the Power of Attorney as well as the Sale Deed. That apart, only in the event of the Will is set aside then only the consequential alienation can be held invalid. The second respondent after considering the materials rightly rejected the petitioner's claim and there is no illegality or irregularity in the order passed by the second respondent District Registrar.

8. The learned Government Advocate appearing for the respondents 1 to 3 would submit that the dispute is still pending before a competent Court and unless and until the Will is proved as forged one, the District Registrar cannot conduct parallel enquiry to decide whether the Will is a forged one and subsequent alienation is valid or not. In such circumstances, the second respondent has rightly rejected the petitioner's application as prima facie no case is made out for conduct of enquiry. The District Registrar has considered all the documents and prima facie came to the conclusion that a criminal case is pending between the parties and unless the criminal case is decided, he cannot conduct any enquiry and if any enquiry is conducted it will only be a empty formality. Hence the District Registrar has rightly passed the said impugned order.

9. I have considered the rival submissions and perused the records carefully.

10. According to the petitioner, a property in which the petitioner has interest has been grabbed by the respondents 4 to 8 through a forged Will. Admittedly the criminal complaint given by the petitioner is still pending trial. That apart, it is also stated that the petitioner also filed a suit for partition and it is yet to reach finality. Now the grievance of the petitioner is based on the alleged forged Will, the respondents 4 and 5 executed a Power of Attorney in favour of the sixth respondent, who, in turn, sold the property in favour of the respondents 7 and 8, in which, the respondents 9 and 10 are attestors. Therefore, the petitioner wants the second respondent District Registrar to conduct an enquiry against the respondents 4 to 8 and reject the alleged Power of Attorney as well as the consequential Sale Deed. Hence he approached the second respondent to take action and the second respondent also after considering the materials available on record has come to the conclusion that the Registrar cannot conduct any enquiry at this stage as the dispute regarding the Will is pending before a Criminal court, unless it is decided, he cannot conduct the enquiry. I find no error in the impugned order passed by the



second respondent District Registrar. The petitioner only wants to take action on the Power of Attorney and the consequential Sale Deed executed based on the alleged forged Will. Unless the Will is declared as a forged one, consequential Power of Attorney and the Sale Deed cannot be held as invalid.

11. That apart, as rightly stated by the second respondent District Registrar, at this stage he cannot go into the question whether the Will is a forged one or not and consequently hold that the other two documents are invalid. Thus, the second respondent has rightly rejected the petitioner's claim.

12. So far as the grievance of the petitioner with regard to issuing of notice and conduct of enquiry by the Registrar, it is an admitted fact that a criminal case is pending in respect of the disputed Will. In such circumstances, even if enquiry is conducted, it will only an empty formality as material available on record prima facie shows that the second respondent cannot proceed with enquiry under Section 68 of the Registration Act, and it no way cause prejudice the petitioner.

13. In the above said circumstances, I find no error or illegality in the impugned order passed by the second respondent. There is no merit in the writ petition, the writ petition fails and the same is accordingly dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kk

To

1. The Inspector General of Registration,
No.100, Santhome High Road, Chennai - 600 028.
2. The District Registrar (Administration)
District Registrar Office, Erode.
3. The Sub Registrar,
Avalpoondurai Sub Registrar Office, Erode.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.29778
+1cc to M/s.C.Prabakaran, Advocate, S.R.No.29795
+1cc to the Government Pleader, S.R.No.30268

W.P.No.8719 of 2020

SKY(CO)
RGA(02/08/2021)