IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.08.2021

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P. No.16150 of 2019

Mrs. Meeral Buhari ... Petitioner

-Vs-

1.Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

2. The Sub-Registrar,
Sub-Registrar Office,
North Chennai, Chennai

3. B. Kareemulla Basha,

4. Mrs. Sajitha Parveen,

5. Ayesha Siddika,

6. S. Shajahan ... Respondents

PRAYER: This Petition is filed under Article 226 of the Constitution of India, praying for the issue a Writ of Mandamus, directing the 1st and 2nd respondents to cancel the sale deed vide Document No.281/2020 dated 24.12.2020 executed by 3rd to 5th respondents in favour of the 6th respondent as claimed in the petitioner's representation dated 13.04.2021 and pass orders accordingly.

For Petitioner :: Mr.K.Mohanamurali
For Respondents 1 & 2 :: Mr.Yogesh Kannadasan
(Government Advocate)

* * * * *

O R D E R

The relief sought for in this writ petition is for a direction to the 1st and 2nd respondents to cancel the sale deed vide Document No.281/2020 dated 24.12.2020 executed by 3rd to 5th respondents in favour of the 6th respondent as claimed in the petitioner's representation dated 13.04.2021 and pass orders accordingly.

2.The learned counsel for the petitioner would submit that the property at No.22 Savari Muthu Street, Mannady, Chennai - 600 001 originally belonged to Rahman Beevi, having purchased the same by virtue of the Sale Deed in Document No.4269 of 1965 on the file of the Sub-Registrar Office, Chengalpet. The said Rahman Beevi died on 18.06.1994. During her life time, she said to have executed a Document No. 288 of 1994 dated 10.03.1994 in favour of the Jameela Beevi against Mohamedan Law. The Document No.288 of 1994 was illegally mentioned as if Rs.15,300/- was paid on 07.07.1994 by Rahman Beevi who died on 18.06.1994. This was also one of the grounds raised by the petitioner's husband in C.S.No.49 of 1995. Likewise, she also executed a Document No.293 of 1994, dated 10.03.1994 in favour of A.R. Farisha against Mohamedan Law. The late husband of the petitioner by name Mr. M.B. Buhari filed C.S. No.49 of 1995 before the Hon'ble High Court, seeking for partition, declaration and for other reliefs for the properties including the aforesaid property at No.22, Savari Muthu Street, Mannady, Chennai - 600 001 as per Mohomedan Law and the same is still pending before this Court. Among other properties, the property at No.22, Savari Muthu Street, Mannady, Chennai was also pledged with Syndicate Bank, Kodambakkam, Chennai by R.M. Basha & Co., and in this regard Syndicate Bank has instituted O.S.No.8024 of 1996 before the IV Additional Judge, the City Civil Court, Chennai. The said Syndicate bank also initiated proceedings under SARFAESI Act, against all the properties held under Hypothecation with the Bank. The husband of the petitioner paid the entire Principal and the interest and released the Hypothecated properties including the properties at No.22, Savari Muthu Street, Mannady, Chennai 600 001. The husband of the petitioner executed an instrument with regard to receiving of the Original title deed documents after repayment of loan to the Syndicate Bank, Kodambakkam Branch, Chennai. Thereafter, the said A.R. Farisha and Jameela entered into an understanding dated 22.08.2005. Under the Memorandum of Understanding, the said Farisha released her 1/4th shares in the properties including the subject property. While the memo of compromise was also entered between Jameela and Farisha dated 22.08.2005 who are the sisters of the petitioner's husband wherein it is clearly admitted that Jameela has only 1/4th share in the aforesaid property. But, B. Kareemulla Basha S/o. M.A. Buhari (Late), Mrs. Sajitha Parveen W/o.Raja Mohammed and D/o. M.A. Buhari (Late), Jameela (Late), and Ayesha (Late) executed document No.281 of 2020 for a portion of 979 1/2 Sq.Ft in favour of S. Shajahan who is the 6th respondent herein on the file of SRO, North Chennai, during the pendency of C.S. No.49 of 1995 on the file of this Court. Further, the actual extent of the subject property is 1258 Sq.ft. (37 ft X 34 ft). However, the Document No.281 of 2020 has been registered for 1959 Sq.ft. without carrying out any inspection on the said premises.

3. The learned counsel for the petitioner has placed the recent Judgment in W.P. (MD) No.10177 of 2021 passed on 17.06.2021 as his reliance wherein it has been held as follows:

"...10. The Registration Act, 1908, provides for a mechanism to the concerned Authority to deal with a complaint pertaining to a fraudulent transaction. Once an Authority exercises such a power and conducts an enquiry and ultimately, finds that the entire transaction is fraudulent, such an order passed by the Authority should get reflected in the records. The Authority on the one hand cannot state that he will declare a transaction to be fraudulent and thereafter, he will send the party to a Civil Court to cancel that document. Declaring a transaction to be fraudulent one, virtually makes that document void in the eye of law. Once a document is void in the eye of law it is non-est and there is no necessity for a party to unnecessarily spend his time in a Civil Court seeking for cancellation of such a document. It will be wasteful exercise without any purpose."

4. According to the aforesaid observations made by this Court, the 2nd respondent, after conducting enquiry, has found the transaction to be a fraudulent one and thereby, the document executed in favour of the 6th respondent has become non-est in the Eye of law. It is stated that this order has also become final. Once such orders are passed, there is no requirement to cancel the document and it is enough if a necessary entry is made in the Encumbrance Certificate itself reflecting the proceedings of the concerned Authority declaring the transaction to be a fraudulent one. Once such an entry is made in the records, it automatically reverses the earlier registration of the fraudulent document. This procedure becomes even more important, since the continuation of the early entry made at the time when the transaction took place and which has been subsequently declared to be fraudulent, will virtually prevent the real owner of the property to deal with her property. Therefore, in all such cases, once an order is passed by the Authority declaring the transaction to be fraudulent and it has become final, the same has to be recorded in the relevant register and it must be reflected in the Encumbrance certificate.

5. It has further been submitted that if fraudulent registration is proved, apart from directing the Registering Officers to file police complaints against the fraudsters, specific orders to be passed directing the Registering Officers for making entry in the relevant index and also in the copies of the documents. While the entire possession of the subject property is with the petitioner and her family members, the 6th respondent being illegal purchaser is attempting to disturb the possession of the petitioner with the fraudulent document created by the 3rd to 5th respondents in favour of him. Hence, the petitioner has no other alternative and efficacious remedy to file the present Writ petition by invoking Article 226 of the Constitution of India,

seeking for a direction to the 1st and 2nd respondent to cancel the Sale Deed vide Document No.281 of 2020 dated 24.12.2020 executed by 3rd to 5th respondent in favour of the 6th respondent herein.

6. The learned Government Advocate would submit that there is a communication dated 28.06.2021 in Letter No. 15357/U2/2021 to the District Registrar (North) from the Head of the Additional Inspector General of Registration (Stamps & Regn.) directing to take action under Section 68(2) of Registration Act. Further, while the husband of the petitioner filed a suit in C.S. No.49 of 1995 before this Court seeking for partition, declaration and for other reliefs among other properties and Memo of Compromise was executed among them in the event of settlement of loan with regard to this subject property, the sale deed dated 24.12.2020 in Document No.281 of 2020 is liable to be questioned. Hence, this Court may pleased be to direct the 2nd respondent herein to conduct the enquiry over this matter.

7. Heard, the learned counsel for the petitioner and the learned Government Advocate for the respondents.

8. In view of the submissions made by the learned Government Advocate, as the Additional Inspector General of Registration (Stamps & Regn.) directs the 2nd respondent herein to take action on the representation made by the petitioner herein under Section 68(2) of Registration Act, this Court is of the view that the 2nd respondent shall conduct the enquiry over this matter as expeditiously as possible and take action accordingly. After receiving the report on the enquiry, the 1st respondent is directed to pass appropriate orders in accordance with law by 28.02.2022. The parties concerned are directed to enter appearance on the date of enquiry scheduled by the 2nd respondent without fail enabling them to dispose of the said issue as quickly as possible.

9. With the aforesaid directions, this Writ petition stands disposed of. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Lbm

To:

1.The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

2. The Sub-Registrar,
Sub-Registrar Office,
North Chennai, Chennai.

+1 cc to Mr.K.Mohanamurali, Advocate Sr.NO. 42943
+1 cc to Government Pleader Sr.NO. 43658

W.P. No.16150 of 2021

RGN(CO)
A.SK(26.10.2021)