



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.07.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.6052 of 2017 and
W.M.P.No.6489 of 2017

1.R.Kannan Pillai
2.B.Dhanalakshmi
3.B.Perumal
4.B.Sivakumar

... Petitioners

Vs.

1.The Inspector General of Registration,
Puducherry State, Pudhucherry.

2.The District Registrar,
Pudhucherry State,
Pudhucherry.

3.Lebernady Tangaradjou

... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the proceedings of the 2nd respondent in D.R.P.No.10 of 2016 dated 04.07.2016 and quash the same as illegal and incompetent.

For Petitioner : Mr.R.Shase
For M/s.M.Guruprasad

For Respondents 1 & 2 : Mrs.G.Djearany
Government Advocate (Pondy)

For 3rd Respondent : Ms.P.V.Rajeswari

ORDER

The prayer sought for herein is for a writ of certiorari calling for the records pertaining to the proceedings of the second respondent in D.R.P.No.10 of 2016 dated 04.07.2016 and quash the same.



2. The third respondent had purchased the property through his father at R.S.No.262/26, Survey No.1690 4/6 part, 1690 3/6/1 part at Thattanchavady Revenue Village, Oulgaret Municipality, Puducherry. The said purchase had been registered as French Notorial Sale Deed dated 09.11.1964 and was registered at the concerned Registered Office in R.V.No.220, Folio 393, No.2235 dated 23.01.1964, accordingly, the third respondent had become the absolute owner of the property.

3. According to the third respondent, after purchasing this property, he had been in France for several years and after he returned to Pondicherry, when he verified about the property in question, it had been occupied by the petitioner and when this was enquired, he comes to know that the third respondent's brother one Anthoni Issac with the strength of a Power of Attorney, said to have been executed by the third respondent, had executed an unregistered sale deed dated 21.02.1996 by which the property in question has been bequeathed to and in favour of one Balakrishnan who, in turn sold the property to the petitioners vide registered Sale Deed No.3779/1998 dated 03.08.1998.

4. After coming to know all these developments, the third respondent had made a request to the respondent Registering Authority to cancel the sale deed dated 03.08.1998 taken place between Balakrishna Pillai and the petitioners as the same was pursuant to the alleged unregistered sale deed dated 12.12.1996 taken place between the brother of the third respondent Anthoni Issac and Balakrishna Pillai.

5. Accepting the said case set up by the third respondent, the Registering Authority, through its order dated 04.07.2016, has cancelled the sale deed dated 03.08.1998 on the ground that, the said deed of sale ought not to have been registered, in view of the fact that, the vendor of the sale deed claimed to have purchased the property only based on the sale deed dated 12.12.1996. Therefore, in the eye of law, especially, under Section 68 and 69 of the Registration Act, that kind of sale cannot be effected and therefore, that ought not to have been registered. Accordingly, the Registering Authority had come to the conclusion that, the registration of the sale deed dated 03.08.1998 in Sale Deed No.3779/1998 can very well be cancelled accordingly, he has cancelled. In the said order itself, the Registering Authority had further stated that, insofar as the possession of the property is concerned, the petitioners had been in possession and enjoyment of the property as per the report of the Tahsildar concerned and that has also been taken into consideration.



6. In that view of the matter, after having cancelled the sale deed concerned, the Registering Authority through the said order dated 04.07.2016 directed the parties concerned to approach the Civil Court to establish the right / title over the property. Aggrieved over the said order passed by the Registering Authority dated 04.07.2016, the petitioners have filed the present writ petition with the aforesaid prayer.

7. Heard Mr.R.Shase, learned counsel appearing for the petitioners who would submit that, insofar as the document in question, which is sought to be cancelled by the impugned action on the part of the respondents is concerned, it was the registered sale deed and once the sale deed is registered, the Registering Authority does not have any power to cancel it whatever be the reason. In this regard, even though the Circular dated 18.03.2015 was intended to be pressed into service, based on the said circular, power cannot be vested with the Registering Authority to cancel the sale deed already registered.

8. In this context, if at all any registration is taken place for transfer of property like the sale as the one now is in issue, the parties affected can approach the Civil Court and get a declaratory decree. Only thereafter the Civil Court decree will be registered and the registered document being maintained in the Registered Office, would be nullified by the Registering Authority. That is the only procedure to be adopted, but they cannot straightaway cancel the document through the impugned order and for the said reason it is liable to be interfered.

9. The learned counsel appearing for the petitioners would further submit that, by virtue of this impugned order, the petitioners, who purchased the property for a valid sale consideration through a deed dated 03.08.1998, are in threat of dispossession, therefore, their possession and in respect of the title over the property shall be protected, she contended.

10. Per contra, Ms.P.V.Rajeswari, learned counsel appearing for the third respondent would submit that, it is an admitted fact that, the property belongs to the third respondent and after purchasing the property, the third respondent had been in a foreign country i.e. France and during that time, he had never executed a Power of Attorney in favour of Anthoni Issac. Therefore, whatever the power based on which, if he executed the unregistered sale deed dated 12.12.1996 to and in favour of Balakrishna Pillai, all these documents, according to the third respondent, are fraudulent documents. Therefore, based on such fraudulent documents, if any such encumbrance is created like the one i.e., the sale deed dated 03.08.1998 that can equally be treated as 'fraudulent document'. Therefore, in that regard, the



Registering Authorities even under Section 83 of the Registration Act, 1908 has got power to have a limited enquiry and after conducting an enquiry, if ultimately the Registering Authority comes to the conclusion that, some fraud has been committed before the Registering Officer who registered the document, based on which, the document can be cancelled or it can be registered in the concerned Index being maintained at the Registrar Office. Therefore, in this regard, what has been stated or has been decided by the Registering Authority through the impugned order is sustainable. Hence, the learned counsel appearing for the third respondent would submit that, the impugned order does not warrant any interference from this Court.

11. I have considered the said rival submissions made by the learned counsel for both sides and have perused the materials placed before this Court.

12. Insofar as the property in question is concerned, that was belonged to the third respondent who admittedly is the original owner of the property from whom whether the property was properly devolved to the brother of the third respondent viz., Anthoni Issac is the moot question, where, two documents they projected. One is the Power of Attorney said to have been executed by the third respondent to his brother and with the strength of the said Power of Attorney, the said brother Anthoni Issac has executed the unregistered sale deed dated 12.12.1996, that is how the vendor of the petitioners i.e. Balakrishna Pillai claimed to have purchased the property.

13. In this context, based on the unregistered document, if the vendor claimed any right over the property, that should have been taken into account by the Registering Authority.

14. In this regard, number of protective provisions are available in the Registration Act, where it is the subjective satisfaction of the Registering Authority as to whether any fraud has been committed and whether the vendor who wants to execute a sale deed or encumber the property, for which, if any instrument is filed, whether the vendor has got prima facie right over the property in question could have been verified.

15. In this context, as has been rightly stated by the respondent in the impugned order, before registering the document in question, the Registering Authority had not noted or not taken into account the unregistered sale deed dated 12.12.1996.

16. If there is an unregistered sale deed dated 12.12.1996 through which if the vendor of the petitioners claim right over



the property, whether based on such right, the property in question can be devolved to the present petitioners through the instrument now in question has to be decided only by the Civil Court.

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17. However, insofar as the prima facie case is concerned, the Registering Authority can come to a conclusion that, some fraud has been committed and in this regard, if the Registering Authority has come to the conclusion that, the fraud has been committed, pursuant to which, instrument wrongly registered by the Registering Authority can very well be cancelled and merely because, such cancellation is taken place, that will not ipso facto confer any right or title in respect of the property to and in favour of either of the parties, therefore that right has to be established by the parties by getting a declaratory decree, for which, they can very well be relegated to the Civil Court to file an appropriate civil suit.

18. Insofar as the possession of the property is concerned, which has been recognised by the Registering Authority in the impugned order itself that, the possession is with the petitioners.

19. In these circumstances, this Court feels that, the parties can be relegated to the Civil Court to file appropriate civil suit to declare with regard to the title over the property, till such time, the possession of the property, which admittedly is in the hands of the petitioners shall not be disturbed. But, at the same time, it is open to the petitioners, while approaching the Civil Court as aforesaid, to file an I.A. seeking a prohibitory order against the 3rd respondent from encumbering the property or creating any third party right.

20. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the impugned order for the reasons stated above need not be interfered with or set aside as it can be sustained for the time being.

(ii) The parties are relegated to approach the Civil Court for filing an appropriate suit to seek for declaratory decree over the title of the property by either parties. If such suit is filed by the third respondent for declaratory decree, it is open to them to file an I.A. to seek for prohibitory order against the petitioners from encumbering with or creating any third party right till the disposal of the suit. The aforesaid exercise shall be undertaken, if they are advised to do, within a period of three months from the date of receipt of a copy of this order. Within



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the three months period, the petitioners are hereby restrained from encumbering the property in question or creating any third party right. Within the three months period, if the third respondent does not approach the Civil Court, this prohibitory order, as stated above, shall not stand in the way for the petitioners to exploit the property. Insofar as the possession is concerned, since it has been recognized in favour of the petitioners, as of now, may be a physical possession or otherwise, that need not be disturbed, unless and until, in this regard, the Civil Court comes to the rescue by way of any order to be passed in any such application to be moved by both parties in this regard.

21. With these observations and directions, this Writ Petition is disposed of accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Inspector General of Registration,
Puducherry State,
Pudhucherry.

2.The District Registrar,
Pudhucherry State,
Pudhucherry.

+1cc to Mr.M.Guru Prasad, Advocate Sr No.36657

+1cc to Mr.P.V.Rajeswari, Advocate Sr No.36814 (28/10/2021)

W.P.No.6052 of 2017

GPL (CO)
PR (06/10/2021)