



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.9934 of 2017

and

W.M.P.Nos.10926 and 10927 of 2017

A.Albons @ Arulappan

...Petitioner

Vs.

1. The Inspector General of Registration,
Santhome, Chennai.

2. The District Registrar,
The District Registrar Office,
Villupuram, Villupuram District.

3. The Sub-Registrar,
The Sub-Registrar Office,
Manalur Pettai,
Thirukoyilur Taluk,
Villupuram District.

4. The Superintendent of Police,
O/o. The Superintendent of Police,
Villupuram,
Villupuram District.

5. The Inspector of Police,
O/o. The Taluk Police Station,
Villupuram, Villupuram District.

6.G.Thairiyasamy
7.Gnana Lourde Raj
8.Leo Baskar
9.Jayaseelan

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records in pursuance to the 2nd Respondent's impugned Order vide his Proceedings na ka no.3510/Aa 1/2016 dated 07.11.2016 and quash the same and consequently direct the Respondents 2 and 3 to take appropriate action against the Respondents 6 to 9 to cancel the release deed No.1704/2016, dated 6.9.2016.



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For Petitioner : Mr.M.Elumalai

For Respondents 1 to 5 : M.R.Gokul Krishnan
Govt. Advocate

For Respondents 6 to 9 : No Appearance

O R D E R

This Writ Petition has been filed to issue a writ of Certiorarified Mandamus to call for the records in pursuance to the 2nd Respondent's impugned Order vide his Proceedings na ka no.3510/Aa 1/2016 dated 07.11.2016 and quash the same and consequently direct the Respondents 2 and 3 to take appropriate action against the Respondents 6 to 9 to cancel the release deed No.1704/2016, dated 6.9.2016.

2. The case of the petitioner is that he has owned the property comprised in R.S.No.57/1A Nansai land 2.10 cents out of which 1.5 cents (0.43.0 hectares); ayan re-survey No.57/1B Nansai land 1.56 cents out of which 0.53 cents (0.21.5 hectares) including re-survey no.57/1B1, Survey no.57/1B2; ayan re-survey no.58.7A and 8A1 nansai land 0.70 cents out of which 0.35 cents (0.28.0 hectares) totally measuring about 1.93 cents along with 12 items of the properties were obtained by him by way of Gift Settlement Deed executed by his mother Kamalammal @ Kamalamari vide Doc.No.609/12 dated 08.03.2012 registered at the Manalurpettai Sub-Registrar Office.

3. The said properties are joint family properties of the petitioner's grand grand father. After partition, petitioner's grand father and his brother enjoyed their respective shares. Accordingly his father derived title over the property at about 7.77 acres. Thereafter, the said property was handed over to the hands of his elder grand father on a oral lease. After demise of the petitioner's father, in the year 2003, his relatives paying lease amount and fraudulently changed Patta and UDR in their name without knowledge of him and they also sold some of the properties by fabricated document. Therefore, the petitioner and his mother filed O.S.No.240 of 2012 on the file of the Sub-Court, Villupuram and sought for declaration of title and recovery of possession in respect of the said property. Before filing the suit, the petitioner's mother executed the settlement deed in his favour dated 08.03.2012. Therefore, the 6th respondent herein lodged a criminal complaint before the Land Grabbing Cell, Villupuram and enquiry was conducted. The petitioner has produced all the relevant documents and thereafter, the said complaint was closed. Thereafter, the 6th respondent lodged a complaint before the 2nd respondent regarding



cancellation of gift settlement deed executed by the petitioner, in his favour dated 08.03.2012 and the 2nd respondent called the petitioner for enquiry. While pending enquiry, again the 6th respondent lodged a complaint and the respondents 2 and 3 threatened the petitioner to execute the release deed with regard to settlement of the property in favour of his mother as prayed by the 6th respondent. The petitioner forcibly had been taken to the office of the 3rd respondent and obtained finger prints and photographs and signatures and registered the release deed in favour of the 6th respondent, and registered the document vide Doc.No.1704/2016 dated 06.09.2016. The petitioner was not paid any single paise to execute the release deed and release deed was fraudulently executed in favour of the 6th respondent. Therefore, the petitioner lodged a complaint before the 2nd respondent to cancel the release deed executed fraudulently in favour of the 6th respondent. However, the 2nd respondent by impugned order dated 07.11.2016 rejected the request of the petitioner for the reason that the 2nd respondent has no power and jurisdiction to cancel the document executed in favour of the 6th respondent herein.

4. The learned counsel for the petitioner would submit that while pending writ petition, the 1st respondent was issued circular dated 09.07.2021 thereby granted power to the District Registrar, if a transaction is found to be partnership firm and the District Registrars/Deputy Inspector General of Registration in his proceedings directed the Registering Officers that no registration of documents should be done based on the fraudulent document as declared by the District Registrar. Therefore, now the 2nd respondent can enquire the matter and pass orders. It is also relevant to extract the relevant portion of the said circular dated 09.07.2021 by a letter 20217/U1/2021 as follows:

'9. So, while passing orders relating to the cases of enquiry under Section 68(2) of Registration Act, all the Drs and DIGs are hereby directed to strictly adhere to the procedure laid down in the Circular No.41530/U1/2017, dated 31.07.2018. Thus, it is hereby reiterated that,

(i) The District Registrars and DIGs should pass speaking orders by way of the proceedings.

(ii) If a transaction is found to be fraudulent and order passed in this regard, the proceedings should invariably contain instructions directing registering officers to make an entry in index-II, as 'The registration of document is found as fraudulent vide proceedings of the District Registrar (Proceeding no. and date to be noted) due to ----- (the finding to be given briefly)'. (iii) The same note has to be

made as footnote in the relevant copies of documents



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filed and to be signed by the Registering Officer. If it is scanned document, then the note has to be made in a separate white paper, signed by the Registering Officer and to be linked to the main document.

(iv) The genuine owner of the property should be allowed to proceed with further registration irrespective of the fraudulent registration with respect to the said property.

(v) No further registration of documents can be done based on the fraudulent document.

10. Further, it has been stated that District Registrars/Deputy Inspector General of Registration in his/her proceedings should direct the Registering Officers that that no registration of documents should be done based on the fraudulent document as declared by the District Registrar. The genuine owner of the property should be allowed to proceed with further registration irrespective of the fraudulent registration with respect to the said property.

The above instructions should be followed scrupulously without fail. If anybody found ignoring / neglecting the above order, it would be viewed very seriously.

The DIGs, are instructed to obtain acknowledgment from all the District Registrars (admin) working under their control and submit to this office immediately for submitting compliance to the Hon'ble Court.'

5. Considering the above discussion, the impugned order dated dated 07.11.2016 passed by the 2nd respondent is hereby set aside. The 2nd respondent is directed to consider the representation made by the petitioner dated 16.09.2021 and conduct enquiry after issuance of notice to the parties concerned, after giving opportunity of hearing to them and pass orders on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order.

6. In the result, this Writ Petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar



To

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O/o. The Taluk Police Station,
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+1 CC to Mr.M.Elumalai, Advocate sr 53037.

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SRA(CO)
SP(10/11/2021)