IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. NO.22329 OF 2017

Vaithilingam

... Petitioner

-Vs-

1. The District Registrar (Administration)
Virudhachalam.
2. The Sub Registrar,
Ulundurpet,
Villupuram.
3. Vijayakumar
4. Babu

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in Na.Ka.No.2334/A1/2015 dated 03.10.2016 and quash the same as illegal, incompetent and without jurisdiction and further direct the second respondent to cancel the registration No.3815/2011 dated 22.02.2011.

For Petitioner	:	Mr.V.Raghavachari
For Respondents For R1 & R2	:	Mr.M.R.Gokul Krishnan Government Advocate.
R3	:	Not Ready in notice
R4	:	Notice served.

ORDER

The Writ Petition has been filed to call for the records on the file of the first respondent in Na.Ka.No.2334/A1/2015 dated 03.10.2016 and quash the same as illegal, incompetent and without jurisdiction and further direct the second respondent to cancel the registration No.3815/2011 dated 22.02.2011.

2. The case of the petitioner is that the subject properties were purchased by him by the two registered sale deeds vide document No.2116/2006 dated 14.12.2006 and document No.588/2007 dated 04.04.2007 from the third respondent herein. Thereafter, the petitioner is in absolute possession and enjoyment of the same. The revenue records also mutated in favour of the petitioner. While being so, the third respondent with an intention to have the subject properties created an agreement for sale in the name of the fourth respondent herein, in respect of the very same property dated 07.08.2006. On the strength of the agreement for sale, the fourth respondent filed suit in O.S.No.128 of 2008 on the file of the Principal Sub Court, Villupuram and conveniently, the third respondent did not appear before the trial Court and he was set exparte. The trial Court granted exparte decree by the judgment decree dated 19.12.2008.

3. On the strength of the exparte decree, the sale deed was executed in favour of the fourth respondent herein on 22.02.2011 registered vide document No.3815/2011. Thereafter, the petitioner came to under stand about the sale deed executed in favour of the four respondent in respect of the very same property and lodged compliant before the Inspector of Police, District Crime Branch, Villupuram and the same was registered in Crime No.17 of 2014 for the offences under Sections 417, 420, 423, 466, 467, 468, 471 & 120(b) of IPC as against the respondents 3 & 4 herein. After completion of investigation, the Inspector of Police, District Crime Branch, Villupuram laid final report for the offences under Sections 417, 420, 423, 466, 467, 468, 471 & 120(b) of IPC as against the respondents 3 & 4, before of the concerned Judicial Magistrate, and it is pending for trial.

4. In the mean time, the petitioner also filed an application before the first respondent to annull the sale deed which was executed in favour of the fourth respondent herein. Though the first respondent considered all the grounds raised by the petitioner, refused to annull the document and directed the petitioner to approach the concerned Court for appropriate relief. Aggrieved by the same, the present Writ Petition has been filed.

5. The learned counsel appearing for the petitioner would submit that the agreement for sale itself subsequent to the sale as such, the agreement for sale itself is not valid. The alleged agreement was created in the 20 rupees stamp paper stood in the name of one Ramesh, Nellikuppam, and the same was corrected in the name of the fourth respondent and fabricated the agreement for sale. It is only evidence from the information received under the Right To Information Act, on 05.04.2013 from the Sub Registrar, Uluthoorpet.

5.1. He further submitted that on the complaint, now the Inspector of Police, District Crime Branch, laid charge sheet as against the respondents 3 & 4. Therefore, it is clearly proved that the alleged agreement for sale is fabricated one and the third respondent only with an intention to grab the entire properties, which were already sold out in favour of the petitioner, created the agreement for sale, as if the third respondent executed in favour of the fourth respondent and thereafter, the fourth respondent filed suit for specific performance. Conveniently the third respondent was absent before the trial Court and he was set exparte, thereby the fourth respondent obtained exparte decree and on the strength of the exparte decree, the trial Court executed the sale deed in favour of the fourth respondent herein.

5.2. He further submitted that the Inspector General of Registration issued circular by way of letter No.20217/U1/2021 dated 09.07.2021 and gave direction to follow the proceedure as directed by this Court. In support of his contention, he relied upon the following judgments :-

(i) 2017 (3) Mad LJ 363 – A.M.Adhil Badusha Vs. Sucharitha Anand and anr.

(ii) AIR 1954 SC 75 – Lala Durga Prasad and anr Vs. Lala Deep Chand and ors

(iii) Order dated 17.06.2021 in W.P(MD).No.10177 of 2021 – S.R.M. Packiri Rajan Vs. The Inspector General of Registration & ors.

6. The learned Government Advocate appearing for the respondents 1 to 4 filed counter stating that the scope of the Inspector General of Registration Circular No.67 dated 03.11.2011 has been unambiguously articulated in the said circular and the same is extracted as follows :-

> “In light of the above discussion, following mandatory procedure is prescribed to deal with the complaints relating to fraudulent registrations through impersonation or production of false documents and evidences.
> ....

> It is further emphasized that the procedure prescribed above is only to deal with fraudulent registrations done and it should in no way be construed to mean that the registering authority shall go into the issue of deciding title in case of rival claims on certain basis.....”

From the bare reading of the above excerpts of the Circular, it could be readily concluded that the scope of said Circular is confined only to deal with the registration of documents achieved through impersonation and or production of false evidences.

6.1. He further submitted that it would be pertinent to note that in the present case does not involve production of a forged document or false evidences such as fabricated identity card, etc., before the registering officer in order to achieve registration of document. Whereas in this case, registration of a sale deed duly executed by the learned Principal Subordinate Judge, Villupuram is the centre of issue and the same does not fall within the scope of said Circular No.67 dated 03.11.2011 and Section 82 of the Registration Act, 1908. Therefore, it is not the case where a forged document has been produced before the Registering Officer for achieving registration of document. The validity of the decree passed by the learned Principal Subordinate Judge, Villupuram in O.S.No.128 of 2008 and sale deed executed in pursuance of decree could not be decided by the District Registrar under said Circular No.67 dated 03.11.2011.

7. Heard Mr.V.Raghavachari, learned counsel appearing for the petitioner and Mr.M.R.Gokul Krishnan, learned counsel appearing for the respondents1 & 2. Though notices served to the respondents 3 & 4, no one is appeared on behalf of them by person or through pleader.

8. Admittedly, the agreement for sale dated 07.09.2006 was fabricated one by the respondents 3 & 4 herein to grab the properties which were sold out in favour of the petitioner. On the strength of the fabricated agreement for sale, they filed suit for specific performance and obtained exparte decree in O.S.No.128 of 2008 dated 19.12.2008. On the strength of the decree, the trial Court executed sale deed in favour of the fourth respondent.

9. Now the Inspector of Police, District Crime Branch, Villupuram found that the agreement for sale itself is fabricated one and laid charge sheet as against the respondents 3 & 4 herein. Though the first respondent has no power to annull the document, as per the Circular No.67 dated 03.11.2011 and under Section 82 of the Registration Act, 1908, since no fabricated document was produced before the Registering Officer

for registration of document, the first respondent has power to annull the document. Admittedly, on the strength of the fabricated document, they obtained fraudulent and collusive exparte decree and on the strength of the decree, the sale deed was executed in favour of the fourth respondent herein.

10. In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in 2017 (3) Mad LJ 363 in the case of A.M.Adhil Badusha Vs. Sucharitha Anand and anr., which reads as follows:-

> "7. The above position of law was clarified by the Hon'ble Supreme Court in Lala Durga Prasad and another vs. Lala Deep Chand and others reported in AIR 1954 SC 75, wherein the Hon'ble Supreme Court while considering the form of decree to be passed in a suit for specific performance where there are alienations between the date of the agreement and the date of the suit, taking note of the principle law, that an agreement of sale by itself does not confer title in the immovable property, observed as follows:
>
> "The proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff"
>
> 8. Thus it could be seen that subsequent purchaser is a necessary party to the suit for specific performance. The subsequent purchaser will only mean the purchaser after the agreement but prior to the suit. As far as pendente lite purchaser, does not get any protection and the decree is binding on him. The Specific Relief Act also confers certain rights of subsequent purchaser. A suit for specific performance will have to fail, if the subsequent purchaser is able to show that he is a bonafide purchaser for value without notice of the subsisting agreement.

This Court held that subsequent purchaser is a necessary party to the suit for specific performance. The subsequent purchaser will only mean, the purchaser after the agreement but prior to the suit.

11. Admittedly, in the case on hand, the petitioner purchased the subject property prior to the agreement for sale. Even then, the petitioner was not added as a party to the suit. Further the suit itself collusive one, between the fourth and third respondents herein, on the strength of the fabricated agreement for sale. The Registration Act, 1908 provided for a mechanism to the concerned authority to deal with the complaint pertaining to the fraudulent transaction. Once an authority exercises such a power and conducts an enquiry and ultimately, finds that entire transaction is fraudulent, such an order passed by the authority should get reflected in the records. On the one hand, the authority 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 a fraudulent one, virtually makes that document void in the eye of law. Once, the document is void in the eye of law, it is nonest and there is no necessity for the party to go before the Civil Court seeking for cancellation of such document.

12. On perusal of the impugned order revealed that, the first respondent rejected the request of the petitioner to annull the sale deed executed in favour of the fourth respondent for the reason that, the sale deed was executed by the Principal Subordinate Court, Villupuram and therefore, the said sale deed cannot be annulled and there is no provisions under Sections 82 & 83 of the Registration Act.

13. As stated supra, on the complaint lodged by the petitioner, the charge sheet has been laid as against the respondents 3 & 4 for the offences under Sections 417, 420, 423, 466, 467, 468, 471 & 120(b) of IPC and it is pending for trial. Therefore, admittedly, the respondents 3 & 4 created the fabricated agreement and obtained collusive decree of specific performance. On the strength of the exparte decree, the trial Court executed the sale deed as such, the entire transaction is fabricated one and the document is void in the eye of law. Hence, the impugned order is liable to be set aside.

14. In view of the above discussions, the order dated 03.10.2016 passed by the first respondent in Na.Ka.No.2334/A1/2015, is hereby set aside and the sale deed executed in favour of the fourth respondent by the Principal Subordinate Court, Villupuram, vide registered document No.3815/2011 dated 22.02.2011 is hereby declared as void and non-est in the eye of law. The Sub Registrar concerned is directed to make necessary entries in the records.

15. In the result, the Writ Petition is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

rts

To

1. The Principal Subordinate Judge,
   Villupuram.

2. The District Registrar (Administration)
   Virudhachalam.

3. The Sub Registrar,
   Ulundurpet,
   Villupuram.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.45325

+1cc to the Government Pleader, S.R.No.45542

W.P. No.22329 of 2017

PMK(CO)
RLP(06/10/2021)