BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
W.P.(MD).No.10177 of 2021

S.R.M.Packiri Rajan ...Petitioner

Vs.

1. The Inspector General of Registration,
   Registration Department,
   No.100, Santhome High Road, Chennai-600 028.

2. The Deputy Inspector General of Registration,
   Registration Department, Thirumohur Road,
   Othakadai, Madurai.

3. The District Registrar, (Administration),
   Registration Department,
   Collectorate Campus, Dindigul.

4. The Sub Registrar,
   Sub-Registrar Office,
   Kodaikanal, Dindigul District.

5. R.Deepa ... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent in O.Mu.No.53/Aa3/2021, dated 05.02.2021 pertaining to the sale deed in Document No.1524/2017, dated 25.09.2017 in favour on one R.Deepa registered on the file of the fourth respondent and quash the same as illegal and consequently direct the official respondents herein to remove the entry of sale deed in Document No.1524/2017, dated 25.09.2017 from their records within a time frame that may be stipulated by this Court.

For Petitioner : Mr.R.R.Kannan
For R-1 to R-4 : Mr.S.Shanmugavel
Government Advocate (Civil)

ORDER

This Writ Petition has been filed questioning the impugned communication of the third respondent, dated 05.02.2021, wherein, the representation made by the petitioner seeking for cancellation of an entry made in the Encumbrance Certificate was rejected.

2. The case of the petitioner is that he is the absolute owner of the subject property, by virtue of a registered partition deed, dated 22.02.1980. The further case of the petitioner is that a fraudulent document came to be executed in favour of the fifth respondent by impersonation based on a forged patta. The document was registered on the file of the fourth respondent. This registration is said to have taken place even without verifying the parent documents.

3. Immediately after the registration of the document, it came to the knowledge of the petitioner. The petitioner made an application to the third respondent to take action and to declare the transaction as a fraudulent transaction. The third respondent, passed an order on 26.03.2018, by directing the petitioner to approach the concerned Civil Court, seeking for cancellation of the document. Aggrieved by the same, the petitioner filed an appeal before the second respondent and the second respondent passed an order on 30.04.2019, declaring that the document executed in favour of the fifth respondent is a fraudulent document.

4. On a careful reading of the order passed by the second respondent dated 30.04.2019, it is found that the second respondent, on a detailed analysis has held that the registration was based on a forged patta and the entire transaction was a fraudulent one. The second respondent, in spite of rendering such a finding, refused to cancel / recall the registration on the ground that there is no such power vested with the Registration Department and the same has been made clear through a Circular issued by the Inspector General of Registration, dated 31.07.2018.

5. The petitioner, thereafter, was expecting the order passed by the second respondent to be reflected in the Encumbrance Certificate, which will effectively reverse the earlier fraudulent transaction. However, the earlier entry made at the time when the fraudulent transaction had taken place continued in the Encumbrance Certificate and therefore, the petitioner made a representation to the third respondent on 04.01.2021, seeking for removal of the entry.

6. The third respondent, by virtue of the impugned communication, dated 05.02.2021, informed the petitioner that the relief sought for by the petitioner cannot be granted by virtue of a Circular of the Inspector General of Registration. Aggrieved by the same, the present Writ Petition has been filed before this Court seeking for appropriate directions.

7. The learned counsel appearing for the petitioner submitted that the order passed by the second respondent, dated 30.04.2019, has become final and the same has not been put to challenge by the fifth respondent. The learned counsel by bringing to the notice of this Court the Judgment passed in the case of ***J.Jayaniithaa Vs. Inspector General of Registration and others*** reported in ***[2021 (1) CTC 839]***, submitted that where a transaction has been held to be fraudulent, a party should not be driven to a Civil Court to cancel the document and proper entry has to be made in the Encumbrance Certificate reversing the earlier entry that was made place at the time when the fraudulent transaction was registered.

8. The learned Government Advocate (Civil) appearing on behalf of the official respondents submitted that the petitioner was insisting for the cancellation of the earlier sale deed executed in favour of the fifth respondent and such request made by the petitioner is un-sustainable since the Hon'ble Supreme Court has held that the Registration Department does not have the power to cancel any document and the same has been followed up by the Circular issued by the Inspector General of Registration informing all the concerned Sub Registrars that such cancellation of a registered document should not be done. The learned counsel further submitted that the earlier transaction in favour of the fifth respondent has been declared to be a fraudulent transaction and the petitioner is also permitted to deal with the subject property. Therefore, he can always register the document pertaining to the property. Apart from that, no further relief can be granted to the petitioner by the Registration Department.

9. This Court has carefully considered the submissions made on either side and perused the materials available on record.

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 a fraudulent one, virtually makes that document void in the eye of law. Once a document is void in the eye of law, it is nonest 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 a wasteful exercise without any purpose.

11. In the present case, the second respondent, after conducting an enquiry, has found the transaction to be a fraudulent one and thereby, the document executed in favour of the fifth respondent has become nonest 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 his 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. It is brought to the notice of this Court that when the circular was issued by the Inspector General of Registration in Letter No.41530/U1/2017, dated 31.07.2018, Clause 6 (a) and (b) specifically provides for such an entry being made and for proper appreciation, the same is extracted hereunder:-

> *"6. Hence, all the District Registrars are hereby directed to do the following:-*
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> *a) 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 indexes and also in the copies of documents. The entry in index (ii) shall be made as " The registration of document is found as fraudulent vide proceedings of the District Registrar (Proceeding No. and dated to be noted) due to----------(the findings to be given briefly)". The same note has to be made as a footnote in the relevant copies of documents 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.*
>
> *(b) District Registrars in his/her proceedings should direct the Registering Officers that no registration of documents should be done based on the fraudulent document as declared by the District Registrar. But, the genuine owner of the property in question should be allowed to proceed with further registration irrespective of the occurrence of the fraudulent registration with respect to the said property."*

12. It is clear from the above circular that the order passed by the competent Authority declaring the transaction to be a fraudulent one and where such order has become final, necessary entry has to be made in index. That apart, a foot note must also be made in the relevant copies of the documents. This safeguard is being given only to ensure that an innocent third party should be made aware that such an order has been passed and that he is not misled to enter into a transaction with regard to a document, which has been held to be a fraudulent one. This procedure will at least save the time of the real owner of the property, who need not unnecessarily knock the doors of a Civil Court.

13. It is made clear that this procedure must be scrupulously followed in all cases, where the transaction has been declared to be a fraudulent one by the competent Authority and such order has become final. The Inspector General of Registration shall refer to this order and issue a circular to all the Sub Registrar Offices across Tamil Nadu and direct them to strictly follow the directions issued in the earlier circular dated 31.07.2018.

14. In view of the above, this Court is inclined to interfere with the impugned communication of the third respondent and accordingly, the same is quashed. There shall be a direction to the third respondent to take steps to record the proceedings of the second respondent, dated 30.04.2019 in the relevant books and the same should be reflected in the Encumbrance Certificate. This will effectively reverse the earlier entry that was made when the sale deed was executed in favour of the fifth respondent and which has been subsequently held to be a fraudulent transaction. This process shall be completed by the third respondent within a period of two weeks from the date of receipt of a copy of this order.

15. This Writ Petition stands allowed with the above directions. No costs.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Inspector General of Registration,
   Registration Department,
   No.100, Santhome High Road, Chennai-600 028.

2. The Deputy Inspector General of Registration,
   Registration Department, Thirumohur Road,
   Othakadai, Madurai.

3. The District Registrar, (Administration),
   Registration Department,
   Collectorate Campus, Dindigul.

4. The Sub Registrar,
   Sub-Registrar Office,
   Kodaikanal, Dindigul District.

+1 CC to M/s.R.R.KANNAN, Advocate (SR-19487[F] dated 17/06/2021)

+1 CC to M/s.SPL GP (SR-19650[F] dated 18/06/2021)

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KB(28.06.2021) 6P 7C