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W.P.No.6060 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2022

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.6060 of 2016
and W.M.P.Nos.5380 and 5381 of 2016

1. C.M. Souriraj

2. C.V. Baskar

...Petitioner

Petitioners 1 and 2 are
represented by their power Agent
K. Padmanathan,
Now at Old No.9, New No. 152,
3rd Street, Anna Nagar,
Chennai – 600 040

Vs.

1.The Deputy Inspector General of Registration,
Kamarajar Salai, Chennai – 600 014.

2. District Registrar (Administration)
Central Chennai, Chennai – 600 014.

3. United Bank of India,
Virugambakkam Branch,
Represented by its Manager,
No.83, Arcot Road,
Virugambakkam, Chennai 600 092.

4. Stephen

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5. P.K. Anbu

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6. Mrs. A. Nirupa.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus by calling for the records of the 2nd respondent in its proceedings Na.2550/Aa1/2012 dated 20.11.2014 as confirmed on appeal by the 1st Respondent in its proceedings No.7422/U1/2015 dated 02.06.2015 and quash the same and consequently direct the 2nd respondent to cancel the fabricated documents viz., 1. Power of Attorney (Document No.1948/2009 dated 07.10.2009) executed in favour of the 4th respondent. 2. Sale Deed (Document No.761/2010 dated 05.03.2010) executed in favour of the 4th respondent. 2. Sale Deed (Document No.761/2010 dated 5.03.2010) executed by the 5th respondent and 3. Settlement deed (Document No.762/2010 dated 05.03.2010) executed in favour of the 6th respondent pertaining to the petitioner's property situated at Door No.152, Plot No.4570, 3rd Street, Y-Block, Anna Nagar, Chennai – 600 040 as null and void, shamed, nominal and unenforceable in law.

For Petitioner : M/s. K. Bhaskar

For Respondents : Mr.D. Ravichandran
Special Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of



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Certiorarified Mandamus by calling for the records of the 2nd respondent in its proceedings Na.2550/Aa1/2012 dated 20.11.2014 as confirmed on appeal by the 1st Respondent in its proceedings No.7422/U1/2015 dated 02.06.2015 and quash the same and consequently direct the 2nd respondent to cancel the fabricated documents viz., 1. Power of Attorney (Document No.1948/2009 dated 07.10.2009) executed in favour of the 4th respondent. 2. Sale Deed (Document No.761/2010 dated 05.03.2010) executed in favour of the 4th respondent. 2. Sale Deed (Document No.761/2010 dated 5.03.2010) executed by the 5th respondent and 3. Settlement deed (Document No.762/2010 dated 05.03.2010) executed in favour of the 6th respondent pertaining to the petitioner's property situated at Door No.152, Plot No.4570, 3rd Street, Y-Block, Anna Nagar, Chennai – 600 040

2. Brief facts relating to the case in a nut shell is as follows:

2.1. The case of the petitioner is that the subject property originally belonged to one V.Govindarajulu who died leaving behind his wife viz., K.V. Subbulakshmi as his only surviving legal heir and the said K.V.Subbulakshmi also died on 22.08.2005. It is pertinent to note that there were no children for the said V.Govindarajulu and K.V.Subbulakshmi. One



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C.M.Ragupathi(late) is the elder brother of the deceased K.V.Subbulakshmi and the first petitioner herein is the son and 2nd petitioner is the grandson of the said C.M.Ragupathi(late).

2.2 When this being the situation the Respondents 4 to 6 allegedly entered into a criminal conspiracy and created forged documents for the said property. Initially they created a fraudulent document on 07.10.2009 as if the said K.V.Subbulakshmi had executed a power of deed to the 4th respondent herein. Thereafter the 4th Respondent on the strength of the power deed sold the property to the 5th respondent vide Sale Deed Doc.No.761/2010 on 0.03.2010 and on the same day the 5th Respondent inturn settled the property to the 6th Respondent vide Settlement Deed 762/2010. But the fact remains that the said K.V.Subbulakshmi had no issues and she died long back on 22.08.2005 and as such she could not have executed any settlement deed in favour of the 4th Respondent and the petitioners are the owner of the subject property. The petitioners are represented by the power agent one K.Padmanathan.

2.3 Thereafter the 5th and 6th Respondents mortgaged the subject



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property in the 3rd respondent/Bank as security towards a existing loan.

When the 3rd respondent came to know about the authenticity of the document executed by the the 5th and 6th Respondents initiated action against them under SARFAESI Act and brought the said property for auction. Aggrieved over the same, the petitioners have filed W.P.No.14764 of 2010 and this Court by an order dated 30.11.2022 disposed of the said writ petition with a direction to the petitioner to approach the Civil Court .

2.4. Whiles, the Inspector General of Registration/first respondent had issued a circular no.67 dated 03.11.2022 wherein there was a direction to the registering authorities to take steps to cancel said forged/fabricated documents by which action the petitioners will move to Civil Court. Pursuant to which the 2nd respondent vide order dated 14.05.2012 cancelled all the fraudulent documents executed by the 4th to 6th Respondents. Aggrieved over the same the 3rd Respondent/Bank filed a W.P.No.51531 of 2014 and this Court by an order dated 08.08.2014 set aside the order passed by the 2nd respondent on 14.05.2012 and remitted back the matter to the first respondent to consider the issue afresh.

2.5. Pursuant to which the 2nd Respondent conducted a detailed enquiry and found that the 3 Documents dated 07.10.2009 and 05.03.2010



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allegedly executed by the Respondents 4 to 6 were fabricated and concocted and passed an order on 20.11.2014 in Na.Ka.No.2550/Aa1/2012 wherein it has been stated that in W.P.No.5131 of 2010 it has been mentioned that the circular issued by the Inspector General of Registration had been stayed by this Court by virtue of the order passed in W.P.No.26019 to 26021 of 2012, therefore, it is not possible to pass an order to cancel the said fraudulent documents. Challenging the same the petitioner preferred an appeal before the first respondent in No.7422/U1/2015 dated 02.06.2015 wherein the petitioners was directed to move the competent Civil Court.

2.6. Aggrieved over the order passed by the second respondent in Na.Ka.No.2550/Aa1/2012 dated 20.11.2014 and the order passed by the first respondent in No.7422/U1/2015 and to cancel the fraudulent documents i.e., firstly the document fraudulently created on 07.10.2009 as if the said K.V.Subbulakshmi had executed a power of deed to the 4th respondent herein and secondly the power of deed executed by the 4th Respondent to the 5th respondent vide Sale Deed Doc.No.761/2010 on 05.03.2010 and finally the document executed by the the 5th Respondent on 05.03.2010 who settled the property to the 6th Respondent vide Settlement

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Deed 762/2010.

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3. Learned counsel for the petitioners submitted that the order impugned in this Writ petition has been passed based on the Circular No.67 dated 03.11.211, however the said circular, which was issued by the Office of the Inspector of General of Registration was withdrawn on 20.10.2017. Hence the order impugned in this Writ petition is not sustainable, as the said circular itself is not in force as on date and therefore the order impugned in this Writ Petition need interference.

4. On the above contentions, this Court heard the learned counsel appearing for the respondents and perused the materials available on record.

5. It is fairly conceded by the learned Additional Government Pleader that the Circular No.67 dated 03.11.2011 has since been withdrawn on 20.10.2017 and therefore, as on date, the circular No.67 is not in force.

6. Accordingly, this writ petition is allowed and the impugned order is set aside and liberty is granted to the respondents 4 and 5 to make

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representation to the second respondent in terms of Section 68(2) of the Registration Act, within period of two weeks from the date of receipt of a copy of this order. If such representation is made, the second respondent is directed to consider the said representation and pass appropriate orders on merits and in accordance with law, after providing opportunity of hearing to the petitioners and respondents 4 and 5 and other aggrieved parties, if any within a period of twelve weeks thereafter.

6. This Writ petition is disposed of with the aforesid direction. No order s to costs. Consequently the connected miscellaneous petitions are closed.

12.09.2022

Speaking Order : Yes/ No
Index : Yes/ No

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To

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