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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

W.P. No.15526 of 2017

and

WMP.Nos.16843 & 20665 of 2017

1. P. Ramasamy
2. R. Vijayan
3. M. Krishnan
S/o. Mani,
Advocate,
Paramathi,
Namakkal District.
4. Abdul Khader,
S/o. Sukur Sahib,
DocumentWriter,
Paramathi,
Namakkal District

...Petitioners

Vs

1. The District Registrar (Administration),
Namakkal.
2. The Sub-Registrar,
Pramathi,
Namakkal District.
3. The Superintendent of Police,
Namakkal District.
4. C.Siva

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus to call for the records of the first respondent in Na.Ka.No.2366/A1/2017, dated 22.05.2017 and quash the same and further direct the respondents not to interfere with the peaceful possession and enjoyment of the property belonging to the 2nd petitioner.



For petitioner ... Mr. I. Abrar Md Abdullah

For respondents ... Mr.P. Balathandayuthan
Special Government Pleader
R1 to R3

... Mr. J.M. Hariharan,
for R4

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ORDER

This writ petition has been filed challenging the order passed by the first respondent directing the 2nd respondent to initiate proceedings against the petitioners, under Section 83 of the Tamil Nadu Registration Act.

2. According to the petitioners, there is a title dispute existing between the petitioners and the 4th respondent regarding a total extent of 0.9 1/2 cents, i.e., 0.02 1/2 cents in Survey No.284/10 A, 0.05 cents in Survey No.284/8B2A, 0.02 cents in 284/9B2. The 2nd petitioner filed a civil suit in O.S.No.70 of 2020, against the 4th respondent and other Government authorities on the file of the Sub-Court, Namakkal for declaring the sale deed, dated 21.09.2007 executed by the 4th respondent and others in favour of one late Subramani and the settlement deed dated 15.10.2007, executed in favour of the 4th respondent herein and another, also the sale deed dated 30.09.2010 and the settlement deed executed in favour of the 4th respondent herein are null and void and the said suit is still pending. Earlier, the petitioners approached the Registration authorities for taking action against the 4th respondent, and the 2nd respondent herein, directed the parties to approach the Civil Court with regard to the title and get a suitable order. Thereafter, once again, for the very same dispute, the first respondent passed the impugned order initiating criminal proceedings under Section 83 of the Registration Act on the ground that the first petitioner, who has no title over the property, has fraudulently executed a settlement deed in favour of his son, the 2nd petitioner.

3. The learned counsel appearing for the petitioners submitted that admittedly, there is a civil dispute between the parties and the suit filed by the 2nd petitioner herein is also pending before the Sub Court, Namakkal. Earlier, the petitioners approached the Registration authorities regarding the sale made in favour of the 4th respondent and the 2nd respondent/Sub Registrar has closed the petition directing him to approach the civil court. Now, based on the application given by the 4th respondent, the first respondent has given a finding that the petitioners herein are not the owner of the



property and he has fraudulently transferred the property in his name and to initiate criminal proceedings under Section 83 of the Registration, and it is illegal.

4.The learned counsel appearing for the 4th respondent submitted that the petitioner approached the revenue authorities and the authorities have given a clear finding that the petitioner is not the owner of the property and the 4th respondent herein is the owner of the property. Suppressing the said fact, the first petitioner herein has executed a settlement deed in favour of his son 2nd petitioner herein and hence, the petitioners 1 and 2 are liable to be prosecuted under Section 83 of the Act and liable to be punished and there is no illegality in the order passed by the first respondent.

5.The learned counsel appearing for the respondents 1 to 3 submitted that after considering the entire materials, the first respondent/the District Registrar, rightly come to the conclusion that the first petitioner herein by making a false statement, transferred the property by way of settlement deed in favour of the 2nd petitioner herein.

6.This Court considered the submissions made on both sides and perused the materials available on records carefully.

7. There is a title dispute between the parties in respect of a total extent of 9 1/4 cents. Now, civil suit in O.S.No.70 of 2020 is also pending between the parties before the Sub Court, Namakkal. Moreover, the first petitioner, herein approached the Registration authorities regarding the sale deed made in favour of the 4th respondent, and the Registration authorities/ first respondent herein by a proceedings dated 30.08.2016 given a finding that it is a civil dispute and directed the parties to approach the Civil Court. Now, the first respondent, by the impugned order dated 22.05.2017 has held that the first petitioner does not have any right or title over the property and he has fraudulently executed the settlement deed in favour of his son, 2nd respondent and directed to initiate proceedings under Section 83 of the Act as against the petitioners 1 and 2 and one Maheshwari and under Section 82(3) as against the 4th petitioner/document writer and recommended the Bar Council to cancel the enrolment of the 3rd respondent/Advocate.

8.Earlier, for the very same property, the first respondent/District Registrar, taken a view that it is a civil dispute, and directed the first petitioner to approach the civil court. Now, the first respondent cannot take a contrary view stating that the first petitioner is not the owner of the property and the first petitioner has executed the settlement



deed in favour of the 2nd petitioner. Admittedly, a civil suit filed by the petitioner with regard to the disputed property is pending, and only Civil Court is competent to decide the title over the property. Untill the Civil Court decide the title in either way, the settlement made by the first petitioner cannot be construed as a fraudulent settlement and said to be executed fraudulently by giving false statement, the first respondent has no power to decide the title over the property. Hence, the impugned order passed by the first respondent is liable to be set aside.

9. Accordingly, the this Writ Petition is allowed and the impugned order passed by the first respondent is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The District Registrar (Administration),
Namakkal.
2. The Sub-Registrar,
Pramathi,
Namakkal District.
3. The Superintendent of Police,
Namakkal District.

+1cc to M/s.J.M.Hariharan, Advocate, S.R.No.29792
+1cc to M/s.I.Abrar MD Abdullah, Advocate, S.R.No.28946
+1cc to the Government Pleader, S.R.No.29690

W.P. No.15526 of 2017

RGN(CO)
RGA(19/05/2022)