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W.P.No.34858 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.34858 of 2022 and
W.M.P.Nos.34269 & 34270 of 2022

1.Gnanasakthi Jagadeesan
2.Rathinamala

... Petitioners

Vs

1.The Deputy Inspector General of Registration,
Salem Zone, Registration Department,
2nd Floor, Kumaragiri Bypass Road,
(Kailash Maansarovar CBSE School Near)
Ammamet, Salem – 636 014.

2.The District Registrar (Admin.)
Registration Department,
Namakkal District.

3.S.P.Ramasamy

4.Saroja

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records leading to passing of the impugned order by the 2nd respondent proceeding in Ref.No.Moo.Mu.876/Aa6/2022 dated 20.06.2022 and quash the same and consequently direct the 1st respondent to defer the enquiring till the final verdict passed in civil suit



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in O.S.No.9/2021 on the file of District Munsif Court, Rasipuram and
O.S.No.21/2021 on the file of Sub-Court, Rasipuram.

For Petitioners : Mr.C.Umashankar
For Respondents : Mrs.N.Senthil Selvi
Government Advocate for R1 & R2

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the entire records leading to passing of the impugned order by the 2nd respondent proceeding in Ref.No.Moo.Mu. 876/Aa6/2022 dated 20.06.2022 and quash the same and consequently direct the 1st respondent to defer the enquiry till the final verdict passed in civil suit in O.S.No.9/2021 on the file of District Munsif Court, Rasipuram and O.S.No.21/2021 on the file of Sub-Court, Rasipuram.

2. In respect of the land belongs to the petitioners, the necessary documents which have been registered before the concerned registering authority sought to be declared as a fraudulent document or forged document at the instance of the 3rd and 4th respondents that petition having been entertained was allowed by the 2nd respondent i.e. District Registrar concerned, as against which, the petitioners preferred appeal before the 1st respondent where the appeal is pending.



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3. Both before the 2nd respondent as well as the appellate authority

i.e. the 1st respondent, it is the case of the petitioners that in respect of the said land as well as the document in question, there has been a civil suit filed and which is pending in O.S.No.9 of 2021 on the file of the District Munsif Court, Rasipuram and O.S.No.21 of 2021 on the file of the Sub Court, Rasipuram and when the civil Courts proceedings are pending, this kind of decision even by exercising the power under Section 77-A of the Registration Act after the amendment taken place in the Registration Act, 1908 with effect from 16.08.2022 may not be justifiable, therefore that point even though has been raised before the 1st respondent, the petitioners apprehend that the 1st respondent, without considering the said point of pendency of the civil suit as has been not done by the 2nd respondent, would not take up the said ground raised by the petitioners and ultimately may decide the appeal, therefore at this juncture since the appeal remedy available to the petitioners may not be an efficacious one, he has chosen to file the present writ petition seeking a writ of certiorarified mandamus as prayed for.

4. Reiterating the aforestated, Mr.C.Umashankar, learned counsel appearing for the petitioners seeks indulgence of this Court.



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5. Heard Mrs.N.Senthil Selvi, learned Government Advocate appearing for the respondents 1 and 2 and in view of the order going to be passed in this writ petition, notice to the 3rd and 4th respondents is dispensed with.

6. The learned Government Advocate for the respondents 1 and 2 would submit that, insofar as the power vested with the 2nd respondent District Registrar under Section 77-A of the Act is concerned, it is a full-fledged power and if he has exercised the power after amendment or if he has exercised the power prior to the amendment under Section 68(2) of the Act, as against which, when appeal is filed before the 1st respondent that has to be decided on merits and in accordance with law and such exercise definitely would be undertaken by the 1st respondent.

7. She would also submit that, insofar as the plea raised by the petitioners that, there has been civil suits pending before the concerned Court in respect of the very same land as well as the documents are concerned, that would be taken into account by the 1st respondent before deciding the appeal on merits and therefore for the said ground, the very order passed by the 2nd respondent need not be interfered with at this



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stage and that can be left to the decision of the 1st respondent who can exercise his power as an appellate authority within the meaning of Section 77-B of the Act, she contended.

8. I have considered the said submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

9. Insofar as the issue raised in this writ petition as to whether the District Registrar concerned under Section 77-A of the Act or the Deputy Inspector General of Registration or Inspector General of Registration as the case may be in exercising the appeal power under Section 77-B of the Act is concerned, even though it has not been specified in the said provisions as to whether these two authorities viz., original authority as well as the appellate authority can act upon if there is a civil dispute on the same transaction is pending before the concerned Court and this has been clarified by the subsequent circular issued by the I.G. of Registration and based on such circular, the District Registrar concerned as well as the appellate authority like the Deputy Inspector General of Registration or Inspector General of Registration as the case may be are



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concerned, they can very well decide that issue as to whether any Civil Court proceedings are pending and if so, as a preliminary issue whether that can be decided and for the very same purpose, the plea raised by the parties concerned can be taken into account as a preliminary issue and can be decided.

10. This position has been reiterated in my order dated 22.12.2022 in W.P.No.34486 of 2022 where I have passed the following order:

“9. I have considered the said submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

10. As has been pointed out by the learned counsel for the petitioners, whether a complaint given by any third party against the alleged transactions, which according to the complainant, may be a fraudulent one or forged one and while entertaining the complaint before conducting a full-fledged enquiry as to the merits of the case, whether it should be verified by the District Registrar as to whether the issue raised in the complaint involves in a civil dispute already has been pending or had been disposed or decided by a competent Civil Court and in that case what shall be done. Though this position has not been mentioned in the provisions of the Act, subsequently the Inspector General



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of Registration has issued the Circular dated 27.09.2022, where he has shown the five situations based on which the difference between the enquiry to be conducted under Section 68(2) and Section 77-A of the Act have been noted. Out of the five situations, the 5th situation is that the civil dispute will not be taken for enquiry, and that would be made uniformly for both the enquiry either under Section 68(2) or under Section 77-A of the Act.

11. However, as has been stated by the learned Government Advocate even to arrive at a said decision by the District Registrar whether there is a civil dispute involved and already there has been a Civil Court decree or judgment to that effect whether that has to be taken into account for the purpose of coming to the conclusion that, the further enquiry need not be entertained as claimed by the complainant through the complaint itself, has to be arrived at by the District Registrar only after ascertaining the *prima facie* facts to be projected by both sides.

12. Therefore, for the limited purpose, the District Registrar, in the considered opinion of this Court, is empowered to issue summons to the persons against whom such complaint is made under Section 77-A of the Act. Therefore if not for a full-fledged enquiry to ultimately conclude the prayer sought for in the complaint atleast for deciding the issue within the meaning of clause 5 of para 13 of the Circular dated 27.09.2022, such a limited enquiry



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is required to be conducted by the District Registrar. Therefore, for the said purpose if summons are issued by the 2nd respondent to the persons against whom such complaint is made, here it is the petitioner, cannot be found fault with. Therefore, this Court has no hesitation to hold that, insofar as the impugned summons are concerned, it cannot be stated that it was issued without jurisdiction of the 2nd respondent and therefore the petitioner has to respond to the impugned summon and appear before the 2nd respondent and put forth their case.

13. In this regard, it is for the 2nd respondent to take up the case to be projected both by the complainant as well as the petitioners against whom such complaint has been given and to decide the same within the meaning of Section 77-A of the Act by taking into account of the situations mentioned in the Circular of the Inspector General of Registration dated 27.09.2022.

14. With this observation, this Court feels that this writ petition can be disposed, accordingly it is disposed of. No costs. Consequently, connected miscellaneous petition is closed.”

11. Since the issue raised in this writ petition also squarely covered by the said order, this Court feels that a similar orders can be passed in



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this writ petition also. Hence, the following directions are given in this

writ petition:

(i) It is for the 2nd respondent to take up the case to be projected both by the complainant as well as the petitioners against whom such complaint has been given and to decide the same within the meaning of Section 77-A of the Act by taking into account the situations mentioned in the Circular of the Inspector General of Registration dated 27.09.2022.

(ii) Till the disposal of the appeal or deciding the preliminary issue, the status quo in respect of the property in question shall be maintained.

12. Accordingly, this Writ Petition is disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

23.12.2022

Index : Yes/No

Speaking Order : Yes/No

Sgl

To

1. The Deputy Inspector General of Registration,
Salem Zone, Registration Department,



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2nd Floor, Kumaragiri Bypass Road,
(Kailash Maansarovar CBSE School Near)
Ammamet, Salem – 636 014.
2. The District Registrar (Admin.)
Registration Department, Namakkal District.

R.SURESH KUMAR, J.

Sgl

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