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W.P.(MD).Nos.8363, 7433, 8792 and 8564 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 08.08.2022

ORDER PRONOUNDED ON : 16 .08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).Nos.8363, 7433, 8792 and 8564 of 2012
and
MP(MD).Nos.2,2,2 and 2 of 2012**

- | | |
|---------------------|---------------------------------------|
| 1.M.Nagammal | ...Petitioner in W.P.No.8363 of 2012 |
| 2.R.Manivannan |Petitioner in W.P.No.7433 of 2012 |
| 3.S.R.Govindarajulu |Petitioner in W.P.No.8792 of 2012 |
| 4.V.Ramesh | ...Petitioner in W.P.No.8564 of 2012 |

Vs

1.The Revenue Divisional Officer
Madurai
Madurai District

2.The Thasildhar
Madurai South
Madurai District

3.R.G.M.Sivasankar

4.M.VanmathiRespondents in all the writ petitions

Common Prayer: These Writ Petitions have been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records



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relating to the impugned order passed by the first respondent in his proceedings in Ne.Mu.No.7878/2008/N dated 01.04.2011 and the consequential impugned order passed by the second respondent in his proceedings in Na.Ka.No.23295/2009 dated 09.05.2012 and quash the same as illegal and without jurisdiction.

(In all the petitions)

For Petitioners	: Mr.B.Saravanan
For R1 & R2	: Mr.N.Muthuvijayan Special Government Pleader
For R3	: Mr.R.Gandhi For M/s.Ajmal Associates
For R4	: Mr.M.Lakshmi Mahendra

COMMON ORDER

The above writ petitions have been filed challenging an order passed by the first respondent herein under which the Patta standing in the name of the writ petitioners were cancelled and the same was restored in the name of the fourth respondent herein. The writ petitioners also challenge the consequential order passed by the second respondent herein.

2.The fourth respondent herein who is the original owner of the property had executed a registered general power of attorney on 27.11.1982 in respect of all her properties in favour of her husband namely R.G.Mani.



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Based upon the said power deed, the said R.G.Mani has executed a registered sale deed on 04.08.1995 in favour of his brother R.G.Shanmugakani. The said R.G.Shanmugakani has executed a registered sale deed in favour of the writ petitioners. Thus, the petitioners claim title and possession to the property in dispute having purchased the same on various dates from the said R.G.Shanmugakani.

3.The learned counsel for the petitioners had contended that certain disputes arose between the fourth respondent and her husband R.G.Mani and the fourth respondent has executed a cancellation deed, cancelling the power of attorney and the same was presented for registration on 08.08.1995. Hence, according to the petitioners, after R.G.Mani has executed a sale deed in favour of her vendor R.G.Shanmugakani on 04.08.1995, the power deed in favour of R.G.Mani was cancelled. Thereafter, the fourth respondent herein had filed O.S.No.194 of 1995 before the District Munsif Court, Madurai as against her husband R.G.Mani and the purchaser namely R.G.Shanmugakani for the relief of permanent injunction restraining them from interfering with her peaceful possession and enjoyment of the disputed property. After trial, the suit was dismissed on 13.09.1996 on the ground that the fourth respondent has not established her possession over the disputed property. The petitioners had further contended that the fourth respondent herein had



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executed a registered settlement deed in favour of his son namely the third respondent herein under Document No.1013 of 2007. Based upon the said settlement deed, the third respondent had filed an appeal before the first respondent herein for cancellation of Patta standing in the name of the writ petitioners.

4.The first respondent herein after hearing the parties, arrived at a conclusion that in O.S.No.194 of 1995, the Civil Court has arrived at a finding that Vanmathi (R4) is the original owner of the property. The first respondent has further held that since the power deed has been cancelled and thereafter, the power agent has executed a sale deed in favour of his brother, the sale deed in favour of R.G.Shanmugakani is not valid. Since the sale deed in favour of the R.G.Shanmugakani is not valid, the purchase made by the petitioners from the said R.G.Shanmugakani are also not valid. On the other hand, based upon the settlement deed executed by her mother, the fourth respondent has claimed title.

5.The first respondent had further held that the writ petitioners had purchased the property without properly perusing the encumbrance certificate. Hence, the Patta that was originally granted in favour of the writ petitioners were cancelled and it was restored in the name of the fourth



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respondent. The second respondent has passed a consequential order implementing the said order of the first respondent. Both these order are under challenge in the present writ petitions.

6.According to the learned counsel for the petitioners, the first respondent herein has considered the validity of the cancellation of the power deed and has also considered the fact that the fourth respondent has cancelled the sale deed executed by her husband in favour of his brother R.G.Shanmugakani. The learned counsel had further contended that the first respondent has gone into the intricate issue of title and he had arrived at a finding that the petitioner do not have any title to the dispute land. The first respondent has no jurisdiction whatsoever to go into the issue whether the writ petitioners have got title to the property or not.

7.The learned counsel for the petitioners had further contended that the husband of the fourth respondent has executed a registered sale deed in favour of his brother R.G.Shanmugakani on 04.08.1995. However, the fourth respondent has presented the cancellation of power deed for registration only on 08.08.1995. Hence, on the date of presentation of cancellation deed, already sale deed has been executed by the fourth respondent's husband in favour of his brother R.G.Shanmugakani. That apart, the sale deed cannot be



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cancelled by the fourth respondent herein who was not a party to the said property. He had further contended that once a sale deed has already been executed based upon the power deed, the fourth respondent has lost her title and thereafter, she cannot execute a settlement deed in favour of his son namely the third respondent herein after dismissal of the Civil Suit in the year 1996.

8.The learned counsel for the petitioners had further contended that after dismissal of O.S.No.194 of 1995, the writ petitioners had purchased the property on 26.09.1996. Since the first respondent has gone into the issue of title, without jurisdiction, the present writ petition has been filed without availing the alternative remedy of filing a revision before the District Revenue Officer. Hence, he prayed for allowing the writ petition.

9.The learned counsel appearing for the private respondents had contended that there was a matrimonial dispute between the fourth respondent and her husband R.G.Mani. The power deed was executed by the fourth respondent only to take care of the properties and not for alienation of the said property. The power deed was cancelled by the fourth respondent herein on 02.08.1995 and it was also brought to the notice of her husband, only thereafter, he has executed a sale deed on 04.08.1995 in favour of his



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brother R.G.Shanmugakani only in order to create an encumbrance over the property.

10.The learned counsel for the respondents had further contended that the learned District Munsif in O.S.No.194 of 1995 has upheld the title of the fourth respondent herein and has proceeded to dismiss the suit only on the ground that she has not proved her possession on the date of filing of the suit. When the fourth respondent has got title to the property, she is entitled to execute a gift deed in favour of his son namely the third respondent herein. Only based on the said gift deed, the third respondent has filed an application before the first respondent for cancellation of Patta. Hence, he contended that the order impugned in the writ petition has to be sustained and the writ petitions may be dismissed.

11.I have considered the submissions made on either side and perused the materials available on record.

12.There is no dispute that the fourth respondent is the absolute owner of the property in dispute. She has executed a registered power deed in favour of her husband R.G.Mani on 04.08.1995. According to the writ petitioners, the power deed conferred power to alienate the disputed property also.



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However, the learned counsel for the respondents had contended that the said power deed was executed only for maintaining the property and not for alienation of the property. On the direction of this Court, the learned counsel for the petitioners had produced a copy of the registered power of attorney dated 27.11.1982 in Doc No. 579 of 1982. A perusal of the said power deed clearly divulges that the power has been conferred upon the power agent to alienate the property also. Hence, the contention of the respondents that no power was conferred upon the husband of the fourth respondent to alienate the property is not factually correct.

13.The learned counsel for the petitioners had contended that the sale deed was executed by the husband of the fourth respondent herein on 04.08.1995 and only thereafter, on 08.08.1995 the cancellation deed of the power deed was presented by the fourth respondent for registration. Hence, the sale deed executed on the basis of the said power deed is valid. However, the learned counsel for the respondents had contended that the cancellation deed was executed on 02.08.1995 and only after coming to know about the said cancellation deed, the fourth respondent's husband has executed a sale deed on 04.08.1995 and hence, the sale deed executed by the fourth respondent's husband in favour of his brother R.G.Shanmugakani is not valid in the eye of law.



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14.The issue relating to the date of cancellation of the power deed and the validity of the sale deed executed by the husband of the fourth respondent in favour of R.G.Shanmugakani have to be decided only by a competent Civil Court. The first respondent herein or this Court exercising its power under Article 226 of Constitution of India cannot adjudicate upon the said dispute. The fourth respondent has proceeded to cancel the sale deed said to have been executed by her husband in favour of his brother. The said cancellation deed has been registered on 12.08.1995. The validity of the unilateral cancellation of the said sale deed by the fourth respondent herein on 12.08.1995 has also to be decided only by the competent civil Court.

15.The writ petitioners had purchased the property based upon the sale deed executed by husband of the fourth respondent in favour of his brother R.G.Shanmugakani. The said R.G.Shanmugakani has alienated the property in favour of the writ petitioners after disposal of O.S.No.194 of 1995.

16. The Civil Court while considering the suit filed by the fourth respondent herein has arrived at a specific finding that the fourth respondent has not established her possession over the disputed property on the date of the filing of the suit. The said decree has not been challenged by the fourth



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respondent herein though the decree was passed in the year 1996. However, the fourth respondent herein has proceeded to execute a registered settlement deed in favour of his son namely the third respondent in the year 2007. Only based upon the said settlement deed, the third respondent has approached the revenue authorities for cancellation of Pattas that were already been granted in favour of the writ petitioners. The validity of the said settlement deed in favour of the third respondent has also to be tested by a competent Civil Court.

17.In view of the above said facts and the judgement in O.S.No.194 of 1995 holding that the fourth respondent herein is not in possession of the disputed property, I find that the first respondent has unnecessarily gone into the issue of title and he has proceeded to hold that the said R.G.Shanmugakani will not get any title and consequentially, the writ petitioners also will not have any title over the property.

18.In view of the specific findings in O.S.No.194 of 1995 that the fourth respondent has not proved her possession on the date of filing of the suit, the first respondent ought not to have cancelled the Patta already granted in favour of the writ petitioners. The first respondent ought to have directed the respondents 3 and 4 to approach the Civil Court to get their title declare.



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19.All the findings recorded by the first respondent herein with regard to the title of the property in dispute are hereby set aside. The Patta is restored in favour of the writ petitioners. However, the parties are at liberty to approach the Civil Court for declaration of their title and possession. Based upon the decree to be passed by the Civil Court, the revenue authorities are at liberty to reopen the issue and grant patta in favour of the parties who succeed before the Civil Court.

20.With the above observations, the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

16 .08.2022

Internet : Yes/No
Index : Yes/No
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To

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Madurai
Madurai District

2.The Thasildhar
Madurai South
Madurai District



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R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

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and

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