



W.P(MD)No.2244 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.08.2022

PRONOUNCED ON : 27.09.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2244 of 2022

and

W.M.P.(MD)No.1947 of 2022

S.Sezhian

... Petitioner

Vs.

1.The Deputy Inspector General of Registration,
Tirunelveli Region,
Tirunelveli.

2.The District Registrar (Admin)
Tenkasi District,
Tenkasi.

3.The Joint Sub-Registrar,
Unit-II, Tenkasi,
Tenkasi District.

4.V.S.Kamarudeen

5.R.Poolithurai Talaivanar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in



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Na.Ka.No.1454/Tha.Pi/2021, dated 07.12.2021 which signed on 10.12.2021 and served to the petitioner on 05.01.2022 and quash the same as illegal and unconstitutional and consequently, direct the third respondent to restore all their records to the original position as it was before passing the impugned order of the first respondent.

For Petitioner : Mr.T.Arul
for Mr.S.Balamurugan

For R1 to R3 : Mr.J.K.Jayaseelan
Government Advocate

For R4 : Mr.K.Navaneetharaja

For R5 : no appearance

ORDER

Heard the learned counsel on either side.

2. The petition mentioned property belonged to the fourth respondent. The fourth respondent executed a power of attorney dated 25.08.2008 in favour of the fifth respondent namely R.Poolithurai Talaivanar. It was also registered as Document No.402/2008 on the file of the third respondent. The said document empowered the fifth respondent to deal with the property. The fifth respondent entered into a sale agreement dated 30.01.2009, when the petitioner agreed to sell the property for a sum of Rs.5,00,000/-. The sale agreement was



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registered as Document No.300/2009 on the file of the third respondent. The sale agreement reads that the fifth respondent received a sum of Rs.1,00,000/- as advance amount. The balance amount was to be paid within a period of one year. The sale deed was executed in favour of the petitioner on 14.10.2009. Based on the same, the revenue records were also duly mutated. While so, on 06.01.2020, the fourth respondent submitted a petition before the District Registrar (Admin), Tenkasi, for cancelling the sale deed dated 30.10.2009 standing in favour of the petitioner on the ground that the authority of the executant had been cancelled on 06.10.2009 itself. The District Registrar (Admin), Tenkasi conducted an enquiry and vide order dated 18.03.2020 relegated him to move the jurisdictional civil Court. Aggrieved by the said order, the fourth respondent preferred an appeal before the Deputy Inspector General of Registration, Tirunelveli. The appellate authority by the impugned order dated 07.12.2021 sustained the stand of the fourth respondent and declared that Document No.3575/2009 is a fraudulent document. The registering authority was directed to make necessary endorsement in the encumbrance register and restrained him from registering any further document based thereon. Challenging the same, the present writ petition has been filed.



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3. The learned counsel appearing for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the order passed by the appellate authority and restore the order passed by the original authority.

4. Per contra, the learned Government Advocate appearing for the official respondents submitted that the impugned order does not call for any interference.

5. The learned counsel appearing for the fourth respondent strongly contended that the writ petition is bereft of any merits. He took me through the averments set out in the counter affidavit and also the materials enclosed in the typed set of papers. He primarily contended that the document in question rests on the power deed executed by the fourth respondent in favour of the fifth respondent. The power deed was admittedly cancelled on 06.10.2009. The sale deed was registered only on 14.10.2009. Obviously, such a sale deed is a fraudulent document. He also contended that the case projected by the writ petitioner stood improbabilized by the document enclosed at Page Nos.42 to 44 of the petitioner's typed set of papers. The said document is a deed of undertaking said to have been executed by the fourth respondent and which was



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in favour of the writ petitioner. In the said document, signatures attributed to the petitioner as well as the fourth respondent are found. The said document reads that only on 04.12.2009, the fourth respondent had received a sum of Rs.4,25,000/-. According to the learned counsel appearing for the fourth respondent, this single circumstance is sufficient to show that the writ petitioner has come out with a false case. He strongly contended that there has been collusion between the power agent and the writ petitioner and that the fourth respondent who is a 80 years old senior citizen has been taken for a ride. He called upon this Court to sustain the impugned order and dismiss this writ petition.

6. I carefully considered the rival contentions and went through the materials on record. There is no dispute that the property was purchased by the fourth respondent vide sale deed dated 09.12.2003. There is also no dispute that the fourth respondent executed a power deed in favour of the fifth respondent on 25.08.2008. I went through the contents of the power deed. It clearly empowered the fifth respondent to negotiate with prospective purchasers and receive advance and also execute sale agreements and sale deeds. Therefore, the execution of the sale agreement on 30.01.2009 is in consonance and tune with the power deed dated 25.08.2008. The only question



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that calls for consideration is whether in view of the cancellation of the power deed on 06.10.2009, the sale deed dated 14.10.2009 executed by the fifth respondent / power agent will turn out to be fraudulent. In this regard, it is necessary to examine the provisions of the Indian Contract Act, 1872.

7. In this case, the authority was partly exercised by the power agent of the fourth respondent on 30.01.2009 itself. A sum of Rs.1,00,000/- had been received as advance amount. Thus, third party had already come into existence. Therefore, the termination of the authority of the agent on 06.10.2009 could not have affected the obligations that had already arisen from the acts already done by virtue of the agency. The writ petitioner ought to have been put on notice by the fourth respondent. The materials placed before me are not sufficient for me to come to the conclusion that the writ petitioner was put on notice. It is true that the photocopy of a postal acknowledgement card has been enclosed in the typed set of papers by the fourth respondent.

8. The case of the fourth respondent is that through legal notice, the writ petitioner was intimated about the cancellation of the power of attorney. The acknowledgement card reads that it was sent only on 12.10.2009. Therefore, there is nothing on record to show that the legal notice said to have been sent



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by the fourth respondent was received before 14.10.2009. I went through the earliest representation given by the fourth respondent before the District Registrar (Admin), Tenkasi. In the said representation, the fourth respondent had only made a statement that he orally intimated the power agent / R5 herein about the cancellation of the power of attorney. Nowhere, has he made any whisper about the issuance of legal notice conveying the termination of the power of attorney to the petitioner. While the petitioner would allege that there has been collusion between the owner and the power agent, the fourth respondent would allege that there has been a collusion between the power agent and the writ petitioner. While the petitioner would rely on the undertaking dated 04.12.2009 and explained that in a panchayat held in the police station, he paid a further sum of Rs.25.000/-, the fourth respondent would completely repudiate with genuineness of the said undertaking. In fact, at his instance, even Crime No.87 of 2020 had been registered on the file of the Courtallam Police Station, Tenkasi. The writ petitioner is figuring as A1, while the power agent is figuring as A2. Therefore, when the very genuineness of the undertaking is challenged by the fourth respondent, the question of placing reliance on the contents thereof does not arise at all.

9. More than anything else, the transaction had taken place in the year



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2009. The sale agreement is also a registered document. Section 3 of the Transfer of Property Act, 1882 clearly states that the registration of the document is notice to the public at large. Therefore, the fourth respondent is not a stranger to the Registration Department. The original power deed was registered and the cancellation deed was also registered. He obviously must have verified the encumbrance register. He could not have been ignorant of the registration of the sale agreement as well as the sale deed in favour of the writ petitioner. The property in question is an agricultural land. The revenue records have been mutated in favour of the writ petitioner. But the petition before the District Registrar (Admin) Tenkasi was given only in January 2020. This long delay for more than 10 years is truly baffling and there is no explanation for the same. In these circumstance, the appellate authority ought not to have interfered with the order passed by the original authority. If according to the fourth respondent, conveyance of the petition mentioned property in favour of the petitioner was without any authority, then, the remedy open to him was to move the jurisdictional civil court for relief. He could not have moved the authorities under Registration Act. The order passed by the first respondent is perverse and illegal. It is quashed. The order passed by the second respondent is restored.



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10. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes/ No

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To

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Tirunelveli.

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Tenkasi District,
Tenkasi.

3.The Joint Sub-Registrar,
Unit-II, Tenkasi,
Tenkasi District.



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