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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.06.2022

Pronounced on : 03.08.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.11432 of 2022

and

WMP(MD)Nos.8127, 8129, 8131 & 8133 of 2022

1.S.Buhari

2.S.Sheik Ali

... Petitioners

VS.

1.The Inspector General of Registration,
Department of Registration,
100, Santhome High Road, Chennai.

2.The Deputy Inspector General of Registration,
Tirunelveli Region, Tirunelveli District.

3.The District Registrar (Admin),
District Registrar Office,
Palayamkottai, Tirunelveli District.

4.The Sub District Registrar,
Sub Registrar Office,
Melapalayam, Tirunelveli.

5.V.S.T.Amanullah

... Respondents



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Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the second respondent herein in his proceedings in Na.ka.3842/Tha.Bi/2021 dated 09.05.2022 and the original order passed by the third respondent herein in Na.Ka.No.5638/A3/2020 dated 23.08.2021 and quash the same.

For Petitioners : Mr.M.Vallinayagam,
Senior Counsel for Mr.D.Nallathambi

For Respondents : Mr.K.S.Selvaganesan,
Additional Government Pleader
for R1 to R4

Mr.H.Arumugam for R5

ORDER

Heard the learned Senior Counsel appearing for the petitioners, the learned Additional Government Pleader appearing for the official respondents and the learned counsel for the private respondent.

2.The case of the petitioners is as follows :

The petition mentioned plots forming part of a larger extent of property in Survey No.13/1 in Melapalayam Village, Palayamkottai Taluk originally belonged to V.S.T.Samsu Thabreez, the father of the fifth respondent. The petitioner's claim is that the petition mentioned three



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plots measuring an extent of 16.528 cents were sold to their father S.Sahul Hameed vide sale deed dated 28.04.1992 registered as Document No.789 of 1992 on the file of the Sub Registrar, Melapalayam. Thiru.S.Sahul Hameed passed away on 04.07.2014 leaving behind as many as 9 legal heirs. The petitioners are 8th and 9th legal heirs. Three of the legal heirs executed a settlement deed dated 17.09.2020 in favour of the second petitioner herein. The parent deed could not be produced because it was misplaced. A complaint was lodged before the Inspector of Police, Palayamkottai. CSR No.698 of 2020 was issued on 04.07.2020. Finally, non-traceable certificate dated 12.09.2020 was also issued. The petitioners could not obtain the certified copy of the sale deed since all the original records lying in SRO, Melapalaym got destroyed during the riot that took place in the year 1992. The fourth respondent registered the settlement deed dated 17.09.2020 as Document No.4948 of 2020. Based on the said registered settlement deed, further sale transaction took place in favour of third parties.

At this stage, the fifth respondent lodged a complaint leading to registration of Crime No.58 of 2020 on 19.10.2020 on the file of the City Crime Branch, Tirunelveli under various provisions of IPC.



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Questioning the same, the accused including the petitioners herein filed CrI OP(MD)No.14837 of 2020 and interim stay was granted and the said O.P is still pending.

The fifth respondent also submitted a petition before the District Registrar (Admin), Palayamkottai on 17.10.2020. After holding an enquiry, the third respondent passed an order dated 23.08.2021 holding that the three documents, namely, Doc Nos.4948/2020, 5560/2020 and 5780/2020 registered on the file of the SRO, Melapalayam are fraudulent. Aggrieved by the same, the petitioners filed an appeal before the DIG of Registration, Tirunelveli. The appellate authority vide order dated 09.05.2022 confirmed the decision of the third respondent and dismissed the appeal. Challenging the same, this writ petition has been filed.

3.The learned Senior Counsel appearing for the petitioners took me through the averments set out in the affidavit filed in support of the writ petition. His primary contention is that the impugned orders are patently without jurisdiction. He argued that as per the statutory scheme set out in the Registration Act and the Rules framed thereunder, the registering authority has no power or authority to go



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into the title of the executant. The scope for enquiry by the registering authority is quite limited. There is no dispute that the settlement deed dated 17.09.2020 was actually executed only by the mother and siblings of the settlee. It is not even the case of the fifth respondent that the settlement deed was forged. When the settlement deed was presented only by the authors thereof, the registering authority could not have refused to register the same. The settlors had explained as to why they could not produced the parent deed. Non-traceable certificate has also been issued by the S.I of Police, Palayamkottai. According to the learned Senior Counsel, all the statutory requirements and formalities were duly complied and the complaint of the fifth respondent ought not to have been entertained at all and he should have been relegated to move the civil court. The learned Senior Counsel characterized the impugned orders passed by the authorities as clearly lacking in jurisdiction. He called for quashing of the same and allowing the writ petition as prayed for.

4.The fifth respondent has filed a detailed counter affidavit and the learned counsel appearing for him took me through its contents. The learned Additional Government Pleader appearing for the official respondents as well as the learned private respondent submitted that the impugned orders do not call for any interference.



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5.The stand of the fifth respondent is that the property in question belonged to his father Thiru.V.S.T.Samsu Thabreez and that since the subject plots were in a low lying area, they were retained by him and never sold. His further contention is that the plots in question continue to be in his family's possession. His specific allegation is that his father never executed the sale deed dated 28.04.1992 as claimed by the petitioners. According to him, there is no such document and Doc No.789 of 1992 projected by the petitioners is a rank forgery. The petitioners have conveniently taken advantage of the fact that the original records in the Sub Registrar's Office, Melapalayam were destroyed in a riot that took place in the year 1992. If really a sale deed as claimed by the petitioners was executed, they would be in a position to produce the original document. Since no such transaction ever took place, the petitioners have come out with a false case that the original sale deed has gone missing. A mere reading of the complaint given by the petitioners before the Inspector of Police, City Crime Branch, Palayamkottai would show that it is a cock and bull story.

6.I carefully considered the rival contentions and went through the materials on record. Circular No.2029209/General. 1(1)/2022 dated 01.04.2022 clearly states that the non-traceable



WEB COURT

certificate can be issued only by the Station House Officer after following the procedure set out therein. In this case, the non-traceable certificate was issued not by the Station House Officer but only by the S.I of Police. Such a non-traceable certificate could not have been taken into account by the registering authority.

7. When the fifth respondent lodged complaint before the third respondent, the third respondent after holding an enquiry, rendered a finding that Doc Nos. 4948/2020, 5560/2020 and 5780/2020 registered on the file of the SRO, Melapalayam are fraudulent vide order dated 23.08.2021. Challenging the same, the petitioners filed O.S No. 336 of 2021 on the file of Sub Court, Tirunelveli. The prayer in the suit was not only for declaration of title and permanent injunction but also to declare that the order dated 23.08.2021 passed by the third respondent is null and void. The petitioners also parallelly filed an appeal before the second respondent, namely, D.I.G of Registration, Tirunelveli.

8. Having filed a suit, the petitioners could not have maintained an appeal for the very same prayer. A litigant cannot be allowed to ride more than one horse at a given point of time. Here, the petitioners are attempting to ride two horses at the same time. I,



WEB COURT

therefore, have to non-suit the petitioners by relegating them to work out their rights before the jurisdictional civil court and I accordingly do so. When the jurisdictional civil court is seized of the matter, it is not necessary for the writ court to adjudicate the same issue. It is well settled that an appeal is a continuation of the original proceedings. The petitioners have questioned the validity of the order passed by the original authority as null and void. Therefore, they can as well seek an amendment in the pending suit impeaching the validity of the order passed by the appellate authority also. The present writ petition is anchored substantially on the same cause of action for which a suit has already been filed by the petitioners. But this is not the only ground on which I decline to interfere. There is yet another ground on which the petitioners deserve to be non-suited.

9.The petitioners along with three other family members are shown as accused in Crime No.58 of 2020 registered on the file of the Inspector of Police, City Crime Branch, Tirunelveli City. To quash the same, CrI OP(MD)No.14837 of 2020 was filed. Interim stay was originally granted. The said O.P has been dismissed by me by another order. The registering authorities after enquiry had gone to the extent of rendering a finding that Doc No.789 of 1992 projected by the



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petitioners is a false document that was created by using an old typewriter. Serious doubts have been expressed regarding the authenticity of the stamp papers. The investigation officer has also filed a counter affidavit stating that the accused have committed these acts in order to grab the property of the fifth respondent herein.

10.The accused claim that the parent deed in respect of the petition mentioned plots went missing on 25.06.2020. The second petitioner Sheik Ali claims that he had kept the document in his two wheeler pouch and that he had parked the vehicle outside Annapoorna Hotel, Tirunelveli when it get lost. The said story appears to be a little far-fetched. The complaint was given only on 30.06.2020. Non-traceable certificate was obtained from the S.I of Police who has no authority to issue the same. The S.I of Police concerned is now facing disciplinary action.

11.A reading of the order passed by the original authority as well as the appellate authority shows the petitioners in poor light. I consciously refrain from dealing with the same for the simple reason that the civil suit has already been filed and that the petitioners must be given full opportunity to establish their case therein. The jurisdiction



under Article 226 of the Constitution cannot be invoked for the asking.

If the court entertains a genuine doubt regarding the conduct of the parties, it can always non-suit them. I am more than satisfied that the petitioners will have to necessarily prove their case only before jurisdictional civil court by adducing convincing evidence. Till they get a clean chit from the jurisdictional civil court, they will necessarily remain under cloud. I therefore decline to grant relief to the petitioners.

12.The writ petition stands dismissed. No costs.

Consequently, connected miscellaneous petitions are also dismissed.

03.08.2022

Index : Yes / No

Internet : Yes/ No

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To:

- 1.The Inspector General of Registration,
Department of Registration,
100, Santhome High Road, Chennai.
- 2.The Deputy Inspector General of Registration,
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