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1

W.P.(MD)Nos.11199 & 11200 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.07.2022

PRONOUNCED ON : 27.09.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.11199 & 11200 of 2022 and
W.M.P.(MD)Nos.8004 & 8005 of 2022

B.Rajesh

... Petitioner
in W.P.(MD)No.11199 of 2022

R.Annalakshmi

... Petitioner
in W.P.(MD)No.11200 of 2022

Vs.

1. The District Registrar (Administration),
District Collectorate Complex,
Vallam National Highways Road,
Pillaiyarpatti, Thanjavur – 613 010.

2. The Joint Sub Registrar No.1,
Thanjavur.

3. R.Balasubramanian,
Chairman & Secretary,
Sri Raghava Janaki Ammal
Educational and Charitable Trust,
E2, Sivarubi Residency,
Godavari Street, Yagappa Nagar,
Thanjavur 613 007.

... Respondents
in both petitions



Prayer in W.P.(MD)No.11199 of 2022: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 2nd respondent in respect of the document registered as No.20/2022 in Book-IV dated 27.01.2022 (viz., the Amended deed of Sri Raghava Janaki Ammal Educational and Charitable Trust) presented by the 3rd respondent and registered by the 2nd respondent and quash the same.

Prayer in W.P.(MD)No.11200 of 2022: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 2nd respondent in respect of the document registered as document No.31/2022 in Book-IV dated 16.02.2022 (viz., the Amended deed of Sri Raghava Janaki Ammal Educational and Charitable Trust) presented by the 3rd respondent and registered by the 2nd respondent and quash the same.

(in both W.Ps.)

For Petitioners : Mr.N.Suresh

For R-1 & R-2 : Mr.J.K.Jayaseelan,
Government Advocate.

For R-3 : Mr.H.Lakshmi Shankar

* * *

**COMMON ORDER**

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Heard the learned counsel on either side.

2. The writ petitioners are son and mother. While Thiru.B.Rajesh is the son of the third respondent Thiru.R.Balasubramanian, there is a contest regarding the present status of the other writ petitioner Mrs.Annalakshmi. She claims to be the legally wedded wife of Thiru.R.Balasubramanian. Thiru.R.Balasubramanian on the other hand would claim that Annalakshmi is his second wife. But it is beyond dispute that all of them were the first trustees as well as the life trustees of Sri Raghava Janaki Ammal Educational and Charitable Trust. The said trust was registered on 14.09.2004. The relationship between the writ petitioners on the one hand and Thiru.R.Balasubramanian on the other had come under strain. Allegations and the counter allegations are being made. At this stage, Thiru.R.Balasubramanian presented two amended deeds of the petition mentioned trust before the second respondent. Under one amended deed, Thiru.B.Rajesh was removed as the fourth trustee, while by virtue of the other amended deed,



Mrs.R.Annalakshmi's name was deleted / removed. These documents were registered as documents Nos.20 of 2022 and document No.31 of 2022 in Book-IV on the file of the second respondent. For quashing the registration of the aforementioned amended deeds, these writ petitions have been filed.

3. The learned counsel appearing for the writ petitioners reiterated all the contentions set out in the affidavits filed in support of the writ petitions.

4. A detailed counter affidavit has been filed on the side of the third respondent controverting the averments set out in the affidavits filed in support of the writ petitions.

5. The learned counsel appearing for the petitioners submitted that though the third respondent is the chairman of the trust, he has no authority to remove the writ petitioners from their position as trustees. The unilateral removal of the writ petitioners from the trust could not have been registered by the second respondent. The second respondent ought to



have conducted an enquiry if such a document could have been presented by the third respondent for registration. Since the second respondent failed to adhere to the procedure set out in the Registration Act, the writ petitioners are entitled to invoke the jurisdiction of the writ Court under Article 226 on the Constitution of India. The learned counsel placed reliance on the following decisions:-

(i) ***(2022) 7 SCC 1 (Veena Singh (Dead) through LRs. Vs. District Registrar / Additional Collector and another)***

(ii) ***2022-3-L.W. 604 (N.Jeevalakshmi and Another V. N.Maheswaran and Others)***

(iii) ***CDJ 2007 Kar HC 658 (L. Shivalingaiah Vs. Panchajanya Vidya Peetha Welfare Trust and Ors.).***

6. Per contra, the learned counsel appearing for the contesting respondent submitted that these writ petitions are not maintainable. He placed reliance on the decision of the Bombay High Court (Nagpur Bench) reported in ***2021 (1) ABR 727 (Lakhichand Marotrao Dhoble and Ors. V.***



Joint Charity Commissioner, Nagpur and Ors.).

According to him, the third respondent being the founder / chairman of the trust is entitled to present the said amended deeds for registration. There is no dispute that the third respondent had executed the amended deeds. Therefore, there is no forgery involved and under Rule 55 of the Tamil Nadu Registration Rules, the registering authority cannot enquire into the competence or title of the executant of the document. The registering authority has complied with the statutory procedure. The writ petitioners in essence seek declaration that their removal from the said trust is illegal. In this regard, the learned counsel placed reliance on the decision of the Calcutta High Court reported in ***(2020) 3 CALLT383(HC) (Biswanath Mukherjee and Ors. V. Ranjith Kumar Sen and Others)***. The declaratory relief sought by the petitioner can be obtained only before the jurisdictional civil Court and writ Court cannot undertake the task of adjudicating the issue. The reliance placed by the writ petitioners on the decision reported in ***2022 SCC On-line SC 544 (Asset Reconstruction Company (India) Limited V. S.P.Velayutham and Others)*** is misplaced. The third



respondent filed detailed notes of submission and he took me through its contents and he pressed for dismissal of the writ petition.

7. I carefully considered the rival contentions and went through the materials on record.

8. Under certain circumstances, writ petitions questioning registration of documents can be maintained. For instance, the registering authority cannot register a deed unilaterally cancelling a registered sale deed. The Hon'ble Full Bench of the Madras High Court vide Order dated **02.09.2022** made in ***W.P.(MD)No.6889 of 2020 etc.*** held as follows:-

“ 44. ...

(a)A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled.

(b)Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or



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extinguish any right, title or interest in the property.

(c)Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.

(d)The transferee or any one claiming under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration.”

9. In fact the aforesaid decision rests on the recent decisions of the Hon'ble Apex Court reported in **(2022) 7 SCC 1 (Veena Singh (Dead) through LRs. Vs. District Registrar / Additional Collector and another)** and **2022 SCC On-line SC 544 (Asset Reconstruction Company (India) Limited V. S.P.Velayutham and Others)**. In **(Veena Singh (Dead) through LRs. Vs. District Registrar / Additional Collector and another) (2022) 7 SCC 1**, it was held as follows:-

“ 30. In the event of a refusal by the Registrar, a suit can be filed by a party in terms of the provisions of Section 77 before a civil Court,



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praying for a decree directing the document to be registered. On the other hand, an order of the Registrar directing the registration of a document is amenable to a challenge under Article 226 of the Constitution. While seeking a writ of Certiorari, the person moving the petition before the High Court would be entitled to establish whether the registration has been ordered in breach of the statutory provisions and is contrary to law. The mere existence of the remedy available before a civil court, under Section 9 of the CPC to avoid the document or to seek a declaration in regard to its invalidity, will not divest a person, who complains that the order passed by Registrar for the registration of the document was contrary to statutory provisions, of the remedy which is available in the exercise of a Court's writ jurisdiction under Article 226 of the Constitution. ..."

In 2022 SCC On-line SC 544 (Asset Reconstruction Company (India) Limited V. S.P.Velayutham and Others), it was held as follows:-



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what he is required to do, that convinced the learned Single Judge to invoke the writ jurisdiction. But the Division Bench overturned the decision of the learned Judge on the ground that the writ court ought to have relegated the parties to the civil Court.

...

53. ... But where a party questions only the failure of the Registering Authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court under Article 226 stands completely ousted. This is for the reason that the writ jurisdiction of the High Court is to ensure that statutory authorities perform their duties within the bounds of law. ...

...

58. ... If the Registering Officer under the Act is construed as performing only a mechanical role without any independent mind of his own, then even Government properties may be sold and the documents registered by unscrupulous persons driving the parties to go to civil court. Such an



interpretation may not advance the cause of justice.”

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10. Coming to the facts on hand, there is no dispute that the writ petitioners were not only the first trustees but also life-time trustees. The amended deeds were presented unilaterally by the third respondent herein. It is true that the third respondent himself was the executant of the amended deeds which were registered. Of course there is no forgery. It is equally true that the third respondent was not a power agent of any principal. But there is real doubt whether the third respondent is competent to file such a document for registration. This is because the effect of the amended deeds is that the public at large are now informed that the writ petitioners have been removed from their office as trustees of the said trust. If the argument of the learned counsel appearing for the third respondent is to be accepted, the result will be that the writ petitioners are also equally at liberty to present the amended deeds removing the third respondent also from his position as Chairman of the trust and as trustee of the petition mentioned trust. Such a situation will lead to confusion. My attention has not been drawn to any



specific provision as of law or clause in the original trust deed empowering or authorising the third respondent to present the amended deeds in question for removal of the writ petitioners from the trust. I however refrain from going into the issue. The registering authority has not conducted any enquiry as to whether the third respondent is competent to present the documents in question on behalf of the trust. Without doing so, the amending deeds have been mechanically registered. The statutory obligation to hold an enquiry to find out if the third respondent can represent the petition mentioned trust and present the amended deeds on its behalf has not been fulfilled.

11. The issue can be looked at from another perspective also. The Hon'ble Full Bench of the Madras High Court vide Order dated **02.09.2022** made in **W.P.(MD) No.6889 of 2020 etc.** held that documents unilaterally cancelling sale deeds cannot be accepted by the registrar. The case on hand is in essence similar. The writ petitioners and the third respondent became the first trustees and life trustees of the trust. The third respondent has unilaterally



presented a document for removing them from the trust. This is akin to unilateral cancellation of a sale deed. Such a document cannot be accepted for registration, unless it is evident that the presentation of the document is in consonance with the statutory provisions as well as the clauses set out in the trust deed. In this view of the matter, the impugned registrations are quashed. The writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

27.09.2022

Index : Yes / No

Internet : Yes/ No

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To:

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2. The Joint Sub Registrar No.1,
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WEB COPY



15

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G.R.SWAMINATHAN,J.

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PRE-DELIVERY ORDER MADE IN
W.P.(MD)No.11199 & 11200 of 2022

27.09.2022