



W.P.(MD)No.25664 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.11.2022

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THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD) No.25664 of 2022

and

W.M.P.(MD)No.19756 of 2022

1.S.Usharani

2.D.Chandrasekar

... Petitioners

Vs.

1.The District Registrar, (Administration),
In the cadre of
Deputy Inspector General of Registration,
Madurai South, Madurai District.

2.Master S.Dharun Kumar

3.D.Subramani

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order of the first respondent in Na.Ka.No.3609/M2/2022, dated 20.09.2022 and to quash the same as illegal.

For Petitioners : Mr.C.M.Arumugam

For R1 : Mr.S.R.A.Ramachandran

Additional Government Pleader



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ORDER

This Writ Petition has been filed seeking issuance of writ of certiorari to quash the impugned order of the first respondent in Na.Ka.No. 3609/M2/2022, dated 20.09.2022 as illegal.

2.By consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

3. The mother of the petitioners herein namely, Indirani had executed a registered release deed in favour of the petitioner and the third respondent herein. On the complaint made by the third respondent and his wife, the first respondent initiated the impugned proceedings and cancelled the registered release deed executed by the deceased mother of the first petitioner in favour of the petitioners and the third respondent herein.

4.The learned counsel for the petitioners submitted that the property in S.No.154/1J, 154/2 situated at Vasantham Nagar, Madurai to an extent of 3 cents 83 sq.ft. was purchased by the father of the petitioners herein. After his demise, the petitioners and the third respondent inherited the title of the property and thus, the mother of the petitioners executed a release deed on 11.05.2016. The second and third respondents herein claimed that the father of the petitioner had executed a registered Will on 11.04.2015 during his life



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time transferring the title of the property in favour of the second respondent herein by giving life estate to the mother of the petitioners. The petitioners state that the said Will is not genuine and the same was not executed by their father with a sound state of mind. The father of the petitioners died immediately after the execution of the said Will suffering with illness. The petitioners are not aware of the said Will.

5. In a legal proceedings before the first respondent based on the representation given by the second respondents's mother, the petitioners and their mother appeared and submitted their objection. The first respondent passed the impugned order without considering the explanation and the factual aspects given by the petitioners and their mother stating that the release deed is a forged document and thereby, cancelled the same.

6.To substantiate his contentions, the learned counsel for the petitioner took this Court through the impugned order. He submitted that in the said order, it has been stated that the release deed was executed in favour of one Devaraj, who is the father of the petitioners and the petitioners herein. This itself implies that the first respondent without appreciating the factual aspects, had mechanically passed the impugned order and the same is liable to be set aside.



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7.He further submitted that a civil suit is pending before the Principal District Munsif Court, Madurai Town for the very same issue in O.S.No.395 of 2021. The pendency of the same was also brought to the notice of the first respondent before passing such order. The first respondent ought to have seen that, pending civil suit, he cannot hold any enquiry in respect of the title of the property or otherwise and also need not deal with any such application. But the same was not considered by the first respondent. Hence, the petitioner seeks to set aside the order passed by the first respondent.

8.The learned Additional Government Pleader appearing for the respondents submitted that the first respondent after hearing the petitioners and other legal heirs had only passed the impugned order. The third respondent himself had acknowledged about the fact that the family members of the third respondent was very well aware of the Will executed in favour of the second respondent. Based on the factual aspects, the impugned order has been passed.

9.Heard the learned counsel appearing on behalf of the petitioner and he learned Additional Government Pleader appearing for the first respondent.

10.The fact involved in this case is regarding the genuineness of the Will executed by the deceased father of the petitioners and the release deed of



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the deceased mother of the petitioners herein. The said issue cannot be decided under Article 226 of the Constitution of India. Further, it is to be noted that a civil suit is pending before the jurisdictional Principal District Munsif Court regarding the very same issue. Hence, the parties are advised to canvass their case before the concerned Magistrate Court and workout their remedy.

11. With the above direction this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

11.11.2022

Index : Yes/No
Internet : Yes/No
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To

The District Registrar, (Administration),
In the cadre of
Deputy Inspector General of Registration,
Madurai South, Madurai District.



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V.BHAVANI SUBBAROYAN, J.

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Order made in
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11.11.2022