



W.A.No.107 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE G.ARUL MURUGAN

W.A.No.107 of 2020 and
C.M.P.No.1492 of 2020

1.A.N.Chandrasekar

2.S.Venkatachalam

... Appellants

Vs.

1.Yogapriya

2.Samiyathal

3.The District Registrar,
Administration,
Office of Registration,
Tiruppur.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 22.11.2019 made in W.P.No.14162 of 2016.

For Appellants : Mr.T.Saikrishnan

For Respondents : Mr.C.Prakasam for R1 and R2

: Mr.Vadivelu Dheenadayalan
Addl. Government Pleader for R3



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This writ appeal has been directed against the order passed by the Writ Court dated 22.11.2019 made in W.P.No.14162 of 2016.

2. The respondents 1 and 2 purchased a property at Survey No.39/1B at Nallur Village, Tiruppur District on 23.11.2011 from the owners of the property. After they purchased the property, they came to know that the private parties viz., A.N.Chandrasekar and S.Venkatachalam who are the present appellants had claimed to have purchased the very same property from the father of the vendors of the respondents 1 and 2 viz., one Nachimuthu Gounder, it was registered in the concerned Registrar Office on 25.01.2006 as Document No.197 of 2006.

3. On enquiry the respondents 1 and 2 came to know that, the said Nachimuthu Gounder who was the original owner of the property died intestate in 1983 itself, therefore in the year 2006 he ought not to have or would not have executed the sale deed in favour of the private respondents. Therefore, the said sale deed registered on 25.01.2006 as



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Document No.197 of 2006 is a fraudulent document made out of impersonation, therefore in order to cancel the document, the private respondents herein had made a request on 20.03.2023 to the District Registrar.

4. The said complaint or representation given by them having been considered, an order was passed by the District Registrar i.e. the 3rd respondent herein on 06.08.2013, whereby, the District Registrar found that the Document No. 197 of 2006 had been executed and registered by impersonation and fraud, therefore Section 82 of the Registration Act, has been violated and a fraud has been committed.

5. Despite these factors having been found by the District Registrar, he has further stated that, insofar as the plea with regard to cancellation of the Document No.197 of 2006 is concerned, such a power vested with the District Registrar by virtue of the Circular issued by the Inspector General of Registration on 03.11.2011 in Circular No.52338/C1/2011 since has been stayed by the orders of this Court, his hands are tied as he could not pass any orders, therefore he has just kept the matter alive with regard to the cancellation of the Document No.197 of 2006.



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6. Aggrieved over the said order passed by the District Registrar dated 06.08.2013, the respondents 1 and 2 herein had filed the said writ petition in W.P.No.14162 of 2016, where, a learned Judge who heard the matter disposed the said writ petition on 22.11.2019.

7. *Inter alia*, the learned Judge has passed the following order:

“3. This Court is also able to see that the order dated 6.8.2013 passed by the District Registrar, Tiruppur clearly says that the aforementioned two persons have played fraud and registered a forged document. But even after six years, no criminal case has been lodged against the above said fraudsters. Therefore, this Court hereby directs the respondent-District Registrar to direct the Sub Registrar, Nallur to register a criminal case against the said Chandrasekaran and Venkatachalam, in the light of the order dated 6.8.2013 declaring the document No.197 of 2006 as a forged document, within a period of two weeks from the date of receipt of a copy of this order. With this direction, the writ petition stands allowed. Consequently, W.M.P.No.12389 of 2016 is closed. No costs.

4. Considering the fact that the District Registrar, Tiruppur has not taken any action for directing the



registration of criminal case against the aforementioned two persons even during the pendency of the writ petition, this Court deems it fit to impose costs of Rs.10,000/- on the District Registrar, Tiruppur who served at the relevant point of time payable from his pocket to the Secretary, High Court Legal Services Committee for the delay in the registration of a criminal case against the aforementioned two persons.

Registry is directed to post the matter after four weeks from the date of receipt of a copy of this order for reporting compliance.”

8. Aggrieved over the same, the two private persons viz., A.N.Chandrasekar and S.Venkatachalam had filed this intra Court appeal as a third party appeal that is how this appeal has been directed.

9. Heard Mr.T.Saikrishnan, learned counsel appearing for the appellants who would submit that, insofar as the sale that has been executed on 25.01.2006 in Document No.197 of 2006 has been registered by the Sub Registrar Office concerned, it is a genuine document and it has been executed only by the owner of the property viz., Nachimuthu Gounder.



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10. If at all Nachimuthu Gounder claimed to have been expired in the year 1983, as has been stated by the respondents, no such death certificate has been filed and it has not been brought to the notice of the appellants, therefore he has sustained the said document. He would further submit that, insofar as the challenge that has been made in the writ petition by the 1st and 2nd respondents with regard to the order passed by the Registrar dated 06.08.2013 is concerned, because of the stay granted against the Circular issued by the I.G. of Registration, the District Registrar passed such an order kept the matter alive or pending, when that being so, the respondents 1 and 2 rushed to this Court to challenge the said order. While deciding the said writ petition, the learned Judge had given a direction to the District Registrar to set the criminal law in motion by giving a complaint against these appellants as if they have committed a fraud or have committed any crime.

11. Therefore, the learned counsel for the appellants would submit that, such a drastic action as directed by the learned Judge without giving an opportunity to the appellants and without having conducting an enquiry is erroneous, therefore he seeks indulgence of this Court against



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the impugned order.

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12. However, Mr.C.Prakasam, learned counsel appearing for the respondents 1 and 2 would submit that, it is a fact that the said Nachimuthu Gounder died in the year 1983 and therefore the question of executing a document by him dated 25.01.2006 registered as Document No.197 of 2006 does not arise. He would also submit that, after having purchased the property in the year 2011 from the legal heirs of the Nachimuthu Gounder who are the real owners of the property then only the respondents 1 and 2 came to know that, a fraudulent transaction had been taken place under which the third parties who are the present appellants herein claimed to have purchased the property from the Nachimuthu Gounder who is a dead person, hence in order to cancel the document when complaint was given to the District Registrar that has been kept pending by citing the reason that the Circular issued by the I.G. of Registration has been stayed. Aggrieved over the said order passed, when writ petition was filed, the learned Judge having gone through the factual matrix of the case has given a direction to the District Registrar to take action against the erring persons including the appellants herein under the punitive provisions.



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13. The learned counsel appearing for the respondents 1 and 2 would also submit that, the law is now well settled where a provision viz., Section 77A since has been inserted in the Registration Act under which power is vested with the District Registrar to conduct an enquiry and to cancel the document whatever which has already been registered in case if there is a fraud committed in registering such document, the Registrar can very well complete the task by cancelling the document as it has already been declared before the Writ Court that Section 82 has been violated and a fraud has been committed. Therefore, the learned counsel would submit that, absolutely there has been no flaw in the order passed by the learned Judge which is impugned herein, hence he seeks indulgence of this Court to sustain the said order.

14. On the other hand, Mr.Vadivelu Dheenadayalan, learned Additional Government Pleader appearing for the official respondent has relied upon the counter affidavit filed by the 3rd respondent/District Registrar dated 19th September 2023, where, *inter alia*, he has relied upon the following averments:

“2.I submit that one Mr.Nachimuthu Gounder, son



Chellamuthu Gounder, had been assigned a land measuring to an extent of 4.83 acres, comprised in survey number 39/1B, at Nallur Village, by Assignment Order No.223/Palladam, through Coimbatore Authorised Officer's Assignment Order No.45/FR IV D1, Dated 14.08.1974. That Nachimuthu Gounder had Two Children, Namely N.Rathinaswamy and Kamalathal. On 22.04.1983, Mr.Nachimuthu Gounder died.

3....

4....

5....

6.It is submitted that while the fact being so, a sale deed has been registered as if the said Nachimuthu Gounder, had executed a sale deed in respect of the land measuring to an extent of 4.83 Acres, at Nallur, in favour of A.N.Chandrasekaran and Mr.S.Venkatachalam, by registered a document No.197 of 2006 at the office of Sub-Registrar, Nallur. After that, S.Venkatachalam had executed power of attorney deed in favour of A.N.Chandrasekaran, appellant herein through registered document No.258/2012 in respect of the said land.

7.It is submitted that the 1st Respondent and 2nd Respondent had given a representation dated 20.03.2023 seeking the cancellation of the sale deed bearing document No.197 of 2006, executed in favour of A.N.Chandrasekaran and S.Venkatachalam, since the Nachimuthu Gounder had



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already died on 22.04.1983 itself, and therefore the said document has been executed by impersonation in favour of the appellant herein.

8.It is submitted that on the representation dated 20.03.2023, a notice in Na.Ka.No.1657/B1/2013, dated 16/04/2013 was sent to the parties and inquiry was conducted in that inquiry it was found that no identity proof of Nachimuthu Gounder, had been submitted during the registration of the sale deed bearing document No.197 of 2006, and during the inquiry the appellants herein were unable to give the full address and other details of Nachimuthu Gounder. Further during the inquiry, in the written submission, submitted by the 2nd Appellant had denied the sale deed executed by Nachimuthu Gounder, in favour of him and denied the execution of power of attorney in favour of 1st appellant herein. In addition to this, the 2nd Appellant has stated in his written submission that he had put his signature only at the request of the 1st appellant. Further, 1st Respondent and 2nd Respondent had submitted a death certificate of Nachimuthu Gounder. In that death certificate it has been stated that the date of the death of Nachimuthu was on 22.04.1983. By this, it was found that the sale deed bearing document number 197/2006, has been registered by way of impersonation. Therefore, the sale deed bearing document No.197 of 2006, is liable to be cancelled. But, that document could not be cancelled since this Hon'ble



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Court had stayed the Circular, issued by the Inspector General of Registrarion in Circular No.67/2011, and the 3rd respondent has passed order in Na.Ka.No.1657/B1/2013, dated 06.08.2013, to that effect.”

15. Relying upon these averments, the learned Additional Government Pleader would contend that, as per the death certificate that has been produced Nachimuthu Gounder died on 22.04.1983 itself, therefore in the year 2006 if any document is executed in his name, certainly it is a rampant fraud committed on the parties as well as the Registrar Office, if that has been noticed by the Registrar Office, the document registered by the Registrar is wrong, therefore as per the then prevailing Circular issued in the year 2011 by the I.G. of Registration, document could have been cancelled, however since stay has been granted by the said Circular issued by the I.G. of Registration that was not made possible before the District Registrar. Therefore, the said order dated 06.08.2013 has been passed. Now in view of the amendment that has been taken place in the Registration Act by insertion of Section 77A of the Act, full power is vested with the Registrar, therefore he can very well cancel the document as it has been made fraudulently.



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16. Such a rampant fraud since has been made, having noticed the same, the learned Judge had directed the Registering authorities to set the criminal law in motion to make a complaint, that also is justified, hence the impugned order passed by the learned Judge does not warrant any interference from this Court, he contended.

17. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

18. It is a fact remains that, in 1983 Nachimuthu Gounder died, in fact the property in question consisting of 4.83 acres at S.No.39/1B at Nallur Village, Tiruppur District is concerned, it has been given by way of assignment by Assignment Order No.223 Palladam, therefore the Authorised Officer (Land Reforms), Coimbatore issued order dated 14.08.1974. Nachimuthu Gounder had two children viz., A.N.Chandrasekar and S.Venkatachalam who are the legal representatives. Nachimuthu Gounder since died on 22.04.1983, the legal heirs inherited the property in question and from the legal representatives



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only the respondents 1 and 2 had purchased the property on 23.11.2011, thereafter only they came to know that, already on 25.01.2006 there has been a sale registered as Document No.197 of 2006 as if it was executed by the said Nachimuthu Gounder who was the original owner of the property.

19. The person who died on 22.04.1983 claimed to have executed the sale deed on 25.01.2006. This itself shows on the face of it that, it is a fraudulent transaction by making an impersonation, therefore the Registrar on considering the complaint of the respondents 1 and 2 has come to a right conclusion that, Section 82 was violated.

20. At that time, Sections 22A, 22B, 77A and 77B since were not available in the statute book i.e. Registration Act, the Registrar has stated that, Section 82 has been violated.

21. Now the amendment since has been made and the aforesaid Sections have been inserted in the Registration Act which has declared what is called fraudulent document and what is meant by fraud also has been explained as per the I.P.C. Explanation.



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22. When that being so, such an impersonation having been taken place and in the name of a dead person if a sale is executed and it was reiterated, certainly it is a fraudulent document and therefore, without waiting for a moment it can be cancelled by the District Registrar.

23. When that being so, the fraudulent action including impersonation taken by the persons here who are the persons involved or in charge of or in connection with the said crime, definitely can be tried and can be punished under the provisions of the Criminal law also by setting the criminal law in motion which in fact has been directed by the learned Judge through the impugned order, hence the said order passed by the learned Judge to set the criminal law in motion cannot be found fault with.

24. The only issue is that, the document in question has not been so far cancelled because of the lack of power which has been expressed by the District Registrar at that time i.e. in the year 2013.

25. In view of the aforestated, we are inclined to dispose of the



writ appeal with the following orders:

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(i) That there shall be a direction to the 3rd respondent /District Registrar to go ahead with the enquiry by giving a notice to both the appellants as well as the respondents 1 and 2 and have an enquiry in it to verify the documents such as Document dated 25.01.2006 i.e. 197 of 2006, Document dated 23.11.2011 as well as the death certificate of the Nachimuthu Gounder and accordingly he can easily come to the conclusion that, the Document dated 25.01.2006 is a fraudulent one and therefore he can very well invoke Section 77A of the Registration Act and cancel such document.

(ii) The moment he comes to such a conclusion and the document is cancelled, the District Registrar can make a complaint to the concerned police authorities to set the criminal law in motion making a complaint against all those persons who are responsible for such fraudulent transaction and impersonation and to request the police authorities to investigate the matter for punishing the culprits.

(iii) Therefore, the order passed by the learned Judge need not be disturbed except with the aforestated modified



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additional directions.

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26. With these directions, the Writ Appeal is disposed of accordingly. However there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] [G.A.M., J.]
21.12.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

Sgl

To

The District Registrar,
Administration,
Office of Registration,
Tiruppur.



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and
G.ARUL MURUGAN, J.

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