



W.P.No.740 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.740 of 2023
and W.M.P.No.687 of 2023

S.Perumal

.... Petitioner

-Vs-

1 The Deputy Inspector General of Registration
Registration, Inspector General of Registration
Salem.

2 The District Registrar, Administration.
Salem East, Salem.

3 The Sub Registrar
Office of Sub Registrar Veerapandi
Salem District

4 S. Rajendran

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records with respect of the impugned proceedings No,2169/E2/2022 and quash the same.

For Petitioner : Mr.R.Nalliyappan
For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader-for RR 1 to 3

Notice dispensed with - R4



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ORDER

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The prayer sought for herein is for a Writ of Certiorari to call for the records with respect of the impugned proceedings No,2169/E2/2022 and quash the same.

2. In respect of the document which has already been registered in favour of the petitioner, a complaint has been given by the 4th respondent to declare it as a fraudulent or forged document and consequently to cancel the same. That complaint given to the District Registrar / second respondent was considered and an order dated 31.01.2022 was passed, where it is concluded that it was not properly registered and therefore it is liable to cancelled. The 2nd respondent expressed his inability to cancel the same as on that date as he did not have the power to cancel it. Hence, he relegated the parties to go before the civil Court.

3. As against the said order, the 4th respondent preferred an appeal before the 1st respondent and the said appeal was also decided through an order dated 09.09.2021 by the 1st respondent, where he has passed an order not to alienate the property and at the same time relegated the 4th respondent to go before the civil Court. Challenging this order, the present writ petition has been filed.



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4. Assailing the said order passed by the 1st respondent, Mr.R.Nalliyappan learned counsel for the petitioner would submit that insofar as the said finding given by both the 1st respondent as well as the 2nd respondent, relegating the parties to approach the Civil Court, though may be justifiable, insofar as the finding given by the 1st respondent in the impugned order not to alienate the property by placing the petitioner under injunction is beyond the scope and jurisdiction of the 1st respondent and on that ground the order impugned passed by the 1st respondent is liable to be interfered with, he contended.

5. However, Mr.Yogesh Kannadasan learned Special Government Pleader appearing for the respondents 1 to 3 would point out that the 2nd respondent through his order dated 31.01.2022 though has found that the document has not been properly registered and the document ought not to have been registered by the registering authority, still he has relegated the party to go before the civil court because, at the time when the order was passed by the 2nd respondent on 31.01.2022, under the provisions of the Registration Act, the registering authorities did not have the power to cancel those documents which were found to be fraudulent one.

6. However, the learned Special Government Pleader would point out that, the law has got amended with effect from 16.08.2022 under which Section 77A



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along with Sections 22A and 22B as well as 77B have been inserted, under which if fraudulent documents have been registered, the same can be cancelled for which complaint can be given to the District Registrar under Section 77A and such power since is vested with the District Registrar, now the 2nd respondent can be directed to exercise such power and for the said purpose, both the orders ie., the order passed by the 2nd respondent as well as the order passed by the 1st respondent can be set aside and the matter can be remitted back to the said authorities.

7. I have considered the submissions made by the learned counsel for both parties and have perused the materials available on record. In view of the order that is going to be passed, notice to the 4th respondent is hereby dispensed with.

8. As has been rightly pointed out by the learned Special Government Pleader, the power though was not available to the 2nd respondent on the date on which the order was passed on 31.01.2022, however, on 09.09.2022 such power since has been already vested with the 2nd respondent, the District Registrar / 1st respondent in his order dated 09.09.2022 ought to have remitted the matter to the 2nd respondent to exercise his power under Section 77A of the Act. Therefore, on that date ie., on 09.09.2022 the 1st respondent ought not to have



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relegated the parties to go before the civil Court. Therefore, this Court has no hesitation to hold that the said order passed by the 1st respondent on 09.09.2022 would not stand in the legal scrutiny. Hence, it is liable to be interfered with and set aside.

9. In the result, this Court is inclined to dispose of this writ petition with the following order.

- The impugned order dated 09.09.2022 passed by the 1st respondent and the order dated 31.01.2022 passed by the 2nd respondent, for the reasons discussed herein above, are liable to be set aside and accordingly the said orders are set aside.
- As a sequel, the matter is remitted back to the 2nd respondent for reconsideration. While reconsidering the same, the 2nd respondent shall issue notice to both the petitioner as well as the 4th respondent and decide the issue afresh by exercising his power under Section 77A of the Act and pass necessary orders thereon on merits and in accordance with law within a period of twelve(12) weeks from the date of receipt of a copy of this order.

10. With the above directions, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

11.01.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST



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To

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Office of Sub Registrar Veerapandi Salem
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R. SURESH KUMAR, J.

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