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W.P.No.2316 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.2316 of 2023

R.Solangi Raja

.. Petitioner

vs

1. The Inspector General of Registration
No.100, Santhome High Road
Raja Annamalai Puram
Chennai, Tamil Nadu 600 028.

2. The District Registrar
No.32c, North Park Street
Gobichettipalayam 638 452.

3. The Sub-Registrar
Sathyamangalam SRO Office
Sathyamangalam Taluk.

4. Vijayalakshmi

.. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the first respondent to consider the appeal petition filed by the petitioner on 21.11.2022, thereby canceling the fraudulent settlement deed executed by the fourth respondent herein registered as Doc.No.6121/2021, dated 12.10.2021 and Doc.No.6160/2021, dated 13.10.2021 after affording an opportunity of personal hearing, thereby disposing the appeal within a reasonable time.



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For Petitioner : Ms.H.Lucia Priyadharshini
Assisted by Mr.P.Manoj Kumar

For Respondents : Mr.P.Sathish
Additional Government Pleader
for respondents 1 to 3.

Notice dispensed with
for respondent 4

ORDER

Prayer sought for herein is for a Writ of Mandamus, directing the first respondent to consider the appeal petition filed by the petitioner on 21.11.2022, thereby canceling the fraudulent settlement deed executed by the fourth respondent herein registered as Doc.No.6121/2021, dated 12.10.2021 and Doc.No.6160/2021, dated 13.10.2021 after affording an opportunity of personal hearing, thereby disposing the appeal within a reasonable time.

2. The property in question, as claimed by the petitioner, belongs to the petitioner's father, which has been settled in favour of the petitioner by settlement deed in the year 2022.

3. The petitioner's father had two wives. The fourth respondent is the second



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wife. Therefore, aggrieved over the said settlement deed made in favour of the petitioner, who is the first wife's son, the fourth respondent filed a civil suit before the Sub Court, Sathiyamangalam in O.S.No.30 of 2011 seeking declaration of the said settlement deed as null and void.

4. In fact, the petitioner, who was a defendant in the suit along with others, since have been set *ex-parte*, the *ex-parte* decree in the suit was passed in 21.09.2011.

5. However, subsequently, the petitioner had filed a petition to set aside the *ex-parte* order and at that stage, the *ex-parte* order was set aside and the suit was posted for trial. At that stage, on 26.02.2014, when the suit was in the list and called for hearing, since there was no representation for the plaintiffs, the learned Judge dismissed the said suit for default. Thereafter, according to the learned counsel appearing for the petitioner, the suit has never been restored.

6. It is the further case of the petitioner that, suppressing these factors, the fourth respondent has settled the property in question in favour of her daughter in the year 2021 and that settlement deed also has got registered by the third



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respondent / Registering Authority on the ground that, in 2011, the suit filed by the fourth respondent was decreed and thereby, subsequently, dismissal of the suit for default, dated 26.02.2014, has been suppressed by the fourth respondent.

7. Therefore, it is the case of the petitioner that the said settlement made by the fourth respondent in favour of her daughter in the year 2021 is a fraudulent document. However, in order to cancel the same, the petitioner preferred a complaint before the second respondent / District Registrar, who, without considering these aspects, rejected the said plea of the petitioner by order dated 09.11.2022. As against which, even though the petitioner preferred an appeal before the first respondent on 21.11.2022, the learned counsel would submit that, in view of the said developments, where it has been suppressed by the fourth respondent about the dismissal of the suit, therefore, it is a fraudulent document, which in fact has not been taken into account in proper perspective by the second respondent / District Registrar, hence the matter can be remitted back to the District Registrar to reconsider the same, in view of the amendment having been made in the Registration Act, under which, Section 77A has been inserted. Therefore, the learned counsel appearing for the petitioner, in this regard, seeks indulgence of this Court.



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WEB COPY 8. Heard Mr.P.Sathish, learned Additional Government Pleader appearing for respondents 1 to 3, who would submit that, if that aspect of the dismissal of the suit filed by the fourth respondent has not been taken into account before passing orders by the second respondent / District Registrar dated 09.11.2022, which is appealed before the first respondent, the said aspect would be reconsidered by the second respondent, for which, the matter may be remitted back to the second respondent, he contended.

9. In view of the order going to be passed in this writ petition, notice to the fourth respondent is hereby dispensed with.

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

11. Since the said aspect of dismissal of the suit filed by the fourth respondent on 26.02.2014 has not been brought to the notice of the second respondent and if it had been brought to the notice of the second respondent, the second respondent would have been in a position to assess the situation or if it is



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brought to the notice of the second respondent, even then, the second respondent ought to have considered the same. Without which, if any decision has been made by the second respondent, vide order dated 09.11.2022, is to be an infirm one.

12. In view of the aforesaid reasons, where the important aspect of the issue since has not been considered, the order would not stand in the legal scrutiny. Therefore, in stead of giving directions by way of Mandamus as sought for originally in this writ petition to the first respondent / Inspector General of Registration to take up the appeal filed by the petitioner and decide the same, this Court feels that the order dated 09.11.2022, which is the subject matter in this writ petition, can be set aside and the matter can be remitted back to the second respondent for reconsideration.

13. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

- (i) That the impugned order dated 09.11.2022, made by the second respondent, which is appealed in appeal dated 21.11.2022 before the first respondent, is set aside. As a sequel, there shall be a direction to the second respondent, to whom the



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matter is remitted back now by this order, to reconsider the issue by giving opportunity of being heard to both the petitioner as well as the fourth respondent, where, the actual facts of the issue as to whether suit was originally decreed in the year 2011, whether subsequently the suit got restored and was dismissed for default by virtue of order dated 26.02.2011 and if so, on what right the fourth respondent has executed the settlement deed in favour of her daughter in the document in question and accordingly, after a detailed enquiry, a decision can be arrived at by the second respondent / District Registrar within a period of eight weeks from the date of receipt of a copy of this order;

(ii) It is made clear that the second respondent shall give notice to both the petitioner and the fourth respondent and after hearing them, such an exercise, as indicated above, shall be undertaken within the time frame.



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14. With these directions, the writ petition is disposed of. There will be no

order as to costs.

Index: Yes/No

20.02.2023

Neutral Citation :Yes/No

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To

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R. SURESH KUMAR, J.

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