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W.P.No.2692 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.2692 of 2023

and

W.M.P.No.2792 of 2023

A.Thangarasu

... Petitioner

Vs.

1.The District Registrar,
Office of the District Registrar,
Salem East.

2.The Sub-Registrar,
Gengavalli,
Salem District.

3.A.Ponnusamy
4.P.Parameshwari
5.Sundar
6.Ramya

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to cancel the partition deed dated 21.05.2018 registered as document No.986 of 2018 on the file of second respondent by disposing of the petitioner's representation dated 02.11.2022 by complying their own proceedings dated 08.11.2022 in NA.Ka.No.6612/E5/2022 in light of Section 77-A of Tamil Nadu Registration Act, 1908 within a time to be stipulated by this Court.



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For Petitioner : Mr.A.Rajakumar

For Respondents : Mr.Yogesh Kannadasan, for RR1 & 2
Special Government Pleader

ORDER

The Writ Petition has been filed directing the first respondent to cancel the partition deed dated 21.05.2018 registered as Document No.986 of 2018 on the file of the second respondent by disposing of the petitioner's representation dated 02.11.2022 by complying their own proceedings dated 08.11.2022.

2. Heard, the learned counsel for the petitioner and the learned Special Government Pleader for the respondents 1 and 2.

3. The main grievance of the petitioner is that the property was originally owned by his father, after his death, he and his brothers are equally entitled to the shares. However, his elder brother with other members of the family, among themselves executed a partition deed without giving any share to the petitioner. Therefore, the petitioner submitted an application before the first respondent to cancel the partition deed under Section 77-A of the Registration Act. Having entertaining the application, no action has been taken so far, hence, he seeks a direction by way of this writ petition.



4. This Court is of the view that the very entertainment of the complaint under Section 77-A itself is not an order. An enquiry under Section 77-A could be held only in the cases falling within the ambit of Section 22-A and 22-B of the Registration Act. The Hon'ble Supreme Court in ***Mohammed Ibrahim Vs. State of Bihar*** reported in **(2009) 8 SCC 751** has held as follows:

"14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.



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In short, a person is said to have made a “false document”, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of “false documents”, it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by



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someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

Therefore, merely because the co-owners shares have been dealt by other co-owner, that document will not fall within the ambit of making false document or forgery or impersonation.

5. In such view of the matter, it is well open to the petitioner to approach the civil Court for seeking partition for his share. With the above direction, the Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

02.02.2023

Index :Yes/No

Neutral Citation :Yes/No

AT



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N.SATHISH KUMAR, J.

AT

To

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