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W.P.No.17941 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.17941 of 2023

E.Ganesan

... Petitioner

Vs

1.The Inspector General of Registration,
Santhome High Road,
Chennai – 28.

2.The Deputy Inspector General (Registration)
Pernpet Govt. Estate,
Saidapet.

3.The District Registrar,
Chengalpattu.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records and quash the impugned order in 35984/U1/2022 dated 10.02.2023 passed by the 1st respondent and to direct the respondents to cancel all documents registered in relation to S.No.6/2, 7/1, 7/4 & 7/7 in Village Thazhambur, Vandalur Taluk, Chengalpet District as no document was registered by the petitioner nor the petitioner's brother.

For Petitioner : Mr.Lieutenant Colonel Ganesan S

For Respondents : Mr.T.Arunkumar
Additional Government Pleader
for R1 to R3



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ORDER

The order dated 10.02.2023 passed by the Inspector General of Registration is sought to be quashed in the present writ petition.

2. The petitioner states that his brother E.Govindaraj @ Vadivel Naicker had been in absolute possession and enjoyment of the properties more fully described in the present writ proceeding. The petitioner states that his brother died unmarried on 15.03.2018. The petitioner claims that he is the surviving second clause two legal heir of his late brother E.Govindaraj @ Vadivel Naicker. Accordingly, the petitioner has taken steps to secure revenue documents including patta and filed a complaint before the Registrar under the Registration Act to cancel certain documents alleged to be registered fraudulently and the petitioner has further raised an allegation of impersonation.

3. The Inspector General of Registration who is the appellate authority made a finding that the petitioner has not produced any document to establish that the subject property belonged to his late brother and further he has not produced any document to establish that he is the legal heir of his brother. Even as per the statement of the petitioner that he is a second

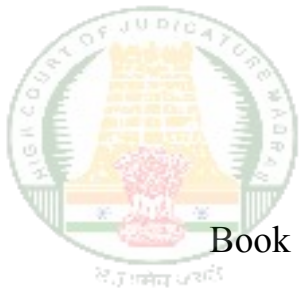


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clause legal heir, the revenue authorities will not issue the legal heir certificate. Thus, the petitioner has to approach the competent Court for the purpose of securing succession certificate.

4. The learned counsel for the petitioner relied on the order passed by the original authority stating that the impersonation was established. Though impersonation was established through documents by the petitioners, the respondents ought to have cancelled the document under Section 77-A of the Registration Act. However, the appellate authority i.e. the Inspector General of Registration formed an opinion that the petitioner has not produced any document to establish that the subject property stands in the name of the deceased brother of the writ petitioner and further the petitioner has not produced any legal heirship certificate for the purpose of establishing his case.

5. The learned counsel for the petitioner states that the original patta stands in the name of the deceased brother of the petitioner even now and therefore, the brother of the petitioner is the absolute owner of the subject property. Mere patta would not confer any title. The revenue documents issued by the competent authorities under the provisions of the Patta Pass



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Book Act or the documents registered under the Registration Act can be used as corroborative documents for establishing the title before the competent Civil Court of Law. Section 35 of the Indian Evidence Act, deals with “*Relevancy of entry in public record made in performance of duty. – An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record, is kept, is itself a relevant fact.*” Therefore, it is not a conclusive factor so as to declare title or ownership in favour of a person.

6. The registering authorities and the revenue authorities under the Registration Act and Patta Pass Book Act are exercising Quasi Judicial powers. All proceedings under the authorities are summary proceedings and through summary proceedings, no title or ownership can be claimed. Wherever there is a doubt or ambiguity or in the absence of any clarity with reference to the records produced by the persons, the competent authorities under the Registration Act and the Patta Pass Book Act are bound to



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relegate the parties to approach the competent Civil Court of Law for the purpose of establishing their civil rights and only after obtaining such declaration, the parties have to approach the authorities, since the Act provides, that on receipt of decree from Court of Law, such authorities are bound to make necessary entries in the register. Therefore, the Scheme of the Act itself contemplates that disputed facts cannot be adjudicated by the authorities competent but after adjudication before the Civil Court of Law and based on the decree passed by the Civil Court, necessary entries are to be made by the authorities by invoking the provisions of the Act. Thus, the Act intends to provide an opportunity to the aggrieved persons to establish their title, ownership only through the Court of Law and several provisions would indicate that the authorities are not empowered to entertain any disputed facts or make finding on such issues.

7. Section 89 (4) of the Registration Act empowers the authorities to register the decree passed by the competent Civil Court of Law. So also Section 14 of the Patta Pass Book Act, 1983 empowers the revenue authorities to make necessary entries based on the decree passed by the Civil Court of Law. This being the scope of the provisions of the respective



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Acts, the parties at no circumstances made an attempt to establish their title or ownership merely based on the revenue records or the documents which all are registered under the Registration Act. No doubt, the District Registrar is empowered to cancel the document registered under Section 77-A of the Registration Act. However, the power conferred under Section 77-A of the Registration Act cannot be misconstrued, since the enquiry has been conducted through summary proceedings and there is no trial natured proceedings. The Registrar is empowered to cancel the registration only on the limited grounds of 'fraud' or 'impersonation'.

8. “Fraud” cannot be defined in a common parlance and it is to be restricted only with reference to the provisions of the Registration Act. Thus, 'fraud' apparent on the face of the record falling within the ambit of Sections 32 to 35 of the Registration Act alone can be interfered with by the registering authority and fraud in general or fraud committed beyond the scope of Sections 32 to 35 cannot be entertained by the registering authority. So also “impersonation” on the face of it alone can be cancelled. Fraud in general meaning is to be dealt with in accordance with the general law. Accordingly, a person aggrieved from and out of fraudulent document



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has threefold remedies. Firstly, an administrative fraud is to be dealt with by the registering authority under the Registration Act and the scope is limited.

The document is to be cancelled by conducting a summary proceeding and the fraud must be apparent and within the meaning of Sections 32 to 35 of the Registration Act. Secondly, an aggrieved person is at liberty to prosecute the persons under the Criminal law. Thirdly, an aggrieved person is entitled to approach the Civil Court of Law for the purpose of establishing his title, ownership, possession etc. All the threefold actions are permissible simultaneously and therefore, the parties are not empowered to approach the revenue authorities or the registering authorities for the purpose of establishing title or the findings given by any such authority will be of no avail or conclusive proof regarding their title, ownership etc.

9. The scope of the statutes at no circumstances be misconstrued either by the parties or by the authorities. There is a growing trend of obtaining revenue records or cancelling the registered document by shortcut methods with a motive to grab the properties and the authorities under this Act if acts beyond the scope of the powers, they are liable to be prosecuted. Therefore, the head of the Department viz., the Commissioner of Land Administration



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and the Inspector General of Registration are bound to monitor the activities of the subordinate officials who all are vested with the powers under the Registration Act and Patta Pass Book Act and ensure that they will always exercise their powers within the limit conferred and any excess exercise of power, lapses, negligence or dereliction of duty are to be viewed seriously and all proper actions are to be initiated against such officials. Land grabbing is frequently noticed on account of sky-rocketing of market value of the immovable properties. Greedy man are continuously attempting to commit frauds on the documents and revenue documents and all such attempts are to be closely watched by the authorities by streamlining the procedures to be followed even to deal with such complaints. Already Circulars are issued by the Inspector General of Registration. In the present case, the Circulars issued by the Government in this regard are to be followed scrupulously by the authorities.

10. In view of the facts and circumstances, this Court do not find any infirmity in respect of the reasons stated by the Inspector General of Registration in the impugned order. The petitioner admittedly a second class heir and has not produced the legal heir certificate of his deceased brother.



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More so, the Inspector General of Registration has made a finding that the petitioner has not filed any document to establish the title regarding the subject property which stands in the name of the brother of the petitioner as per his statement. This being the factum, the petitioner is at liberty to approach the Civil Court of Law for the purpose of establishing his title and only thereafter he can approach the competent authorities under the provisions of the statutes for initiation of appropriate actions.

11. With the above observations, the Writ Petition stands dismissed.

However, there shall be no order as to costs.

20.06.2023

Index : Yes/ No

Speaking order : Yes /No

Neutral Citation : Yes/No

Sgl
To

- 1.The Inspector General of Registration,
Santhome High Road,
Chennai – 28.
- 2.The Deputy Inspector General (Registration)
Pernpet Govt. Estate, Saidapet.
- 3.The District Registrar,
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S.M.SUBRAMANIAM, J.

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