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WP No.9313 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-07-2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.9313 of 2023

And

WMP Nos.9412 and 9413 of 2023

R.Subramanian

... Petitioner

Vs.

1.The District Registrar (Administration),
O/o.The District Registrar,
Namakkal.

2.P.Marappan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Na.Ka.No.2873/A7/2022 dated 13.02.2023 quash the same and further direct the respondents from interfering with petitioner's property as per Document Nos.4088/2011 and 4555/2016 on the file of the Sub Registrar, Tiruchengode.



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For Petitioner : Mr.I.Abrar Md Abdullah
For Respondent-1 : Mr.D.Ravichander,
Special Government Pleader.
For Respondent-2 : Mr.T.Balaji

ORDER

The enquiry notice issued by the first respondent-District Registrar in proceedings dated 13.02.2023, is sought to be quashed in the present writ petition.

2. The petitioner states that his father executed Settlement Deed on 09.04.2010 and there was an error in the said document. The said Settlement Deed was cancelled vide document No.4087 of 2011 and on the very same day, the father of the petitioner executed another Settlement Deed in respect of the subject property with correct details vide document No.4088 of 2011.

3. Pursuant to the said Settlement Deed, the petitioner is in peaceful possession and enjoyment of the subject property.



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4. The second respondent filed civil suit in OS No.135 of 2011 on the file of the Sub Court, Tiruchengode for partition and for injunction. A preliminary decree was passed allotting shares both to the petitioner and to the second respondent and final decree proceedings are pending. While-so, the preliminary decree was dismissed by way of an Appeal Suit in AS No.20 of 2020, which has been transferred subsequently to the Special Court i.e., Additional District Court at Tiruchengode and is still pending.

5. During the pendency of the present writ petition, the petitioner submitted complaint under Section 77-A of the Registration Act, 1908, to cancel the document on the ground that it was executed fraudulently.

6. The learned counsel for the petitioner mainly contended that the second respondent earlier filed complaint to cancel the document before the Competent Authority and the said complaint was disposed of by the Authority in issuing orders dated 04.01.2021 and accordingly, the second



respondent was asked to approach the Competent Civil Court of Law for the purpose of resolving the issues.

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7. When the District Registrar passed an order on 04.01.2021 relegating the parties to approach the Competent Civil Court of Law and subsequent complaint now filed by the second respondent based on which the impugned enquiry notice was issued, is untenable and to be set aside.

8. The learned counsel appearing on behalf of the second respondent clarified by stating that the earlier complaint was filed by the second respondent prior to the amendment inserted by way of Section 77-A in the Registration Act, 1908. The order of the District Registrar also prior to the amendment and prior to the amendment, the District Registrar had no power to cancel the registered document. Under those circumstances, the District Registrar passed an order on 04.01.2021 relegating the parties to approach the Competent Civil Court of Law.

9. However, after the amendment and insertion of Section 77-A in the Registration Act, 1908, the petitioner has given a fresh complaint and



the said complaint was entertained and a notice was issued asking the petitioner to submit his explanations/objections for the purpose of conducting an enquiry. Thus there is no infirmity in respect of the impugned notice issued to the writ petitioner.

10. As rightly pointed out by the learned counsel appearing on behalf of the second respondent, prior to the amendment, the District Registrar had not vested with the power to cancel the document. The Circular No.67 issued by the Government has also been withdrawn.

11. However, after insertion of Section 77-A in the Registration Act, 1908, the power to cancel the document on the ground of fraud and impersonation have been conferred on the Authorities. Fraud and impersonation apparent on the face of the record alone must be interfered with by the Authorities and the Authorities Competent are incompetent to decide the title dispute or disputed issues of civil nature between the parties.

12. Therefore, the scope of Section 77-A of the Registration Act, 1908, cannot be accepted for the purpose of adjudication of civil rights



between the parties. If there is fraud or impersonation in the context of Sections 32 to 37 and 39 of the Registration Act, 1908, is identified, then alone the District Registrar is empowered to cancel the document and in respect of cases of fraud or otherwise, the parties are relegated to approach the Competent Civil Court of Law. In other words, the District Registrars cannot usurp the powers of the Civil Court and adjudicate the disputed civil rights between the parties.

13. In the present case, the earlier order cannot prevent the petitioner from submitting fresh complaint once the amendment made under the provisions of Section 77-A of the Registration Act, 1908. Therefore, the principle of estoppel would not arise in the present case and the petitioner has to participate in the process of enquiry and place his objections/ explanations or documents, if any, enabling the District Registrar to conduct an enquiry by following the procedures and by affording an opportunity to all the parties concerned and pass appropriate orders on merits and in accordance with law, as expeditiously as possible.



14. With the above observations, the present writ petition stands dismissed. However, there shall be no order as to costs.

Consequently, the connected miscellaneous petitions are also dismissed.

19-07-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

To

The District Registrar (Administration),
O/o.The District Registrar,
Namakkal.



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S.M.SUBRAMANIAM, J.

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