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W.P.No.10230 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10230 of 2023

and

W.M.P.No.10233 of 2023

S.Arunachalam

... Petitioner

Vs.

1.The District Registrar (Administration),
Department of Registration,
No.72/B, Sandhaimedu,
Avaraipakkam,
Office of District Registrar,
Tindivanam.

2.The Sub Registrar,
Vallam and Post,
Gingee Taluk,
Villupuram District.

3.A.Appandairaj

4.A.Udhayan

5.A.Indhrakumar

6.A.Jeevendran

7.Padmamalini

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.5152/A3/2022 dated 03.03.2023 and quash the same.

For Petitioner : Mr.P.Dinesh Kumar

For R1 and R2 : Mr.G.Krishna Raja
Additional Government Pleader

ORDER

The order passed by the District Registrar dated 03.03.2023 cancelling the document of the year 2005 under Section 77-A of the Registration Act is under challenge in the present writ petition.

2. The petitioner states that the petitioner's wife purchased the subject property and became the owner of the same. The petitioner states that the petitioner has instituted a Civil Suit in O.S.No.17 of 2023 on the file of the Subordinate Court, Gingee. The said Civil Suit is pending and the respondents 3 to 7 are the defendants in the Suit. While so, before filing of Suit, the contesting respondents filed a complaint under Section 77-A of the Registration Act to cancel the document No.1621 of 2005 dated 06.07.2005.



The District Registrar conducted summary proceedings by affording opportunities to the parties and cancelling the said document on the ground that the registration of said document was made in a fraudulent manner.

3. It is not in dispute that the subject property is a private property and the document was registered between the private individuals transferring the property. While so, Section 77-A of the Act which came into effect from 16.08.2022 cannot operate retrospectively for the purpose of documents registered long before. In other words, Section 77-A is to be applied prospectively in respect of the private properties and the documents registered between the private individuals relating to the properties.

4. Before insertion of Section 77-A of the Registration Act, the District Registrar has no power to cancel the document. When the power was conferred through Section 77-A of the Act the amendment was also silent about the retrospective exercise of powers by the District Registrar to cancel the document. The principles in this regard are considered by this Court in W.P.No.19239 of 2023 dated 25.07.2023 and the relevant paragraphs are extracted hereunder:



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“4. Without going into the allegations of fraud or impersonation, this Court has to consider the repercussions in the event of conducting summary proceedings for the purpose of cancelling the documents registered long back. The amendment was made under the Tamil Nadu Act 41 of 2022 with effect from 16.08.2022 and accordingly, Section 77A was inserted. The provision is ambiguous with reference to its retrospective application. The consequence of retrospective application is to be considered by the Courts. If unguided powers are provided to the District Registrars to cancel the documents, irrespective of the time of registration, the same would result in an anomalous situation where the documents registered several decades back also may be the subject matter for cancellation under Section 77A of the Act.

5. The legislative intention of the amendment and insertion of Section 77A in the Act would not confer powers for its retrospective application, so as to cancel the documents registered several decades back. All those documents which were registered long years back were governed under



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the provisions of the Act and those documents were either subjected to civil proceedings before the Civil Court of law or criminal proceedings or otherwise.

9. Therefore, necessarily, the Court has to form an opinion that in respect of the documents falling under Section 22B of the Act, if sought to be cancelled, then the Registrar is empowered to cancel the documents under Section 77A of the Act. In respect of other documents registered prior to the amendment, one has to understand that those documents are to be dealt in accordance with the law prevailing at the time of registration either by approaching the Civil Court of law or otherwise. When all those documents registered prior to the amendment of the year 2022 are subjected to Section 77A of the Act, then this Court is afraid that an anomalous situation would be created by approaching the District Registrar for the purpose of adjudication of disputed issues with reference to those documents registered several years back. The amendment effected from 16.08.2022 has not intended to do so nor the provision expressly provides any such retrospective application. Prior



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to amendment, Section 22A and Section 22B was not in force. Thus, Section 77A cannot have retrospective effect. In other words, Section 77A must be read in conjunction with Section 22A and Section 22B of the Act. Insertion of all these three Sections are to be understood holistically to avoid any inordinance.

10. Article 59 of the Limitation Act, 1963 stipulates that, to cancel or set aside any instrument or decree for rescission of a contract, the period of limitation is three years. Therefore, even for setting aside an instrument or a decree or for rescission of a contract the period of three years has been contemplated under the Limitation Act, the documents registered several years back or decades back cannot be the subject matter for cancellation of those documents under Section 77A of the Act.

14. In the present Writ Petition, disputed issues exist between the parties. Even the second respondent herein was a party respondent in yet another Writ Petition filed by one Mr.T.Arockia Dass in W.P.No.754 of 2023, wherein this Court



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passed an order on 10.01.2023. Therefore, the dispute between the parties cannot be resolved by way of summary proceedings under Section 77A of the Act. Normally, amendments under the Statutes are intended for prospective effect, unless retrospective effect has been expressly made under the amendment. Presumptive retrospective implementation of the amendments in the Statutes would cause larger repercussion and would result in disastrous consequences. Lakhs and lakhs of documents registered prior to the amendments will be placed for adjudication before the Registrar to cancel those documents on personal or on varieties of reasons. Therefore, in the absence of any specific provision to implement the amendment retrospectively, the power conferred through amendment is to be exercised with prospective effect with reference to the documents registered subsequent to the amendment and insertion of Sections 22A, 22B and 77A of the Act. Thus, the petitioner as well as the complainant in the present case have to redress their respective grievances before the competent Civil Court of law.”



5. Since the petitioner has already instituted a Civil Suit, the respondents are at liberty to contest the civil suit for the purpose of establishing their right over the subject property, if necessary, they can file a counter claim also. This being the scope of the Civil Suit pending before the Competent Court of Law, the order passed by the District Registrar cannot be sustained. However, allowing the present writ petition stand in the way of the parties to establish their respective cases independently based on the documents and evidences available on record in the pending suit and the validity of the disputed document can be adjudicated independently in the civil suit between the parties without reference to the orders in the present writ petition.

6. Accordingly, the order impugned passed by the District Registrar / 1st respondent in his proceedings in Na.Ka.No.5152/A3/2022 dated 03.03.2023 is quashed and the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.08.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes



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To

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2.The Sub Registrar,
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S.M.SUBRAMANIAM, J.

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