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W.P.Nos.11396 and 11398 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.11396 and 11398 of 2023

W.P.No.11396 of 2023

Mr.Vaithialingam

... Petitioner

Vs.

1.The Inspector General of Registration,
Registration Department,
100, Santhome Salai,
Chennai.

2.The District Registrar,
District Registrar Office,
Nagapattinam.

3.The Sub-Registrar,
Sub-Registrar Office,
Vedaraniyam,
Nagapattinam District.

4.Mr.N.Rathinasamy

5.Mr.N.Ramasamy

6.Mrs.Kanagavalli

7.Mr.G.Muruganantham

8.Mr.Sivakumar



9.M/s.Tamilarasi

10.Mrs.Malliga

11.Mrs.Sinthamani

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to cancel the registration of Document Numbers 1243/2020, 1244/2020, 1245/2020, 1246/2020, 1247/2020, 1248/2020, 1249/2020 and 1250/2020 on the file of the 3rd respondent, registered on 19.08.2020, in pursuance of the representation dated 07.12.2022 sent by the petitioner.

For Petitioner	: Mr.G.K.Gaarkey Chandhar
For R1 to R3	: Mr.D.Ravichander, Special Government Pleader
For R4 to R11	: Mr.D.Vairamoorthy

W.P.No.11398 of 2023

Mr.N.Muthusamy

... Petitioner

Vs.

- 1.The District Collector,
Collector Office,
Nagapattinam.
- 2.The Revenue Divisional Officer,
RDO Office,
Vedaraniyam,
Nagapattinam District.
- 3.The Tahsildar (Revenue),
Tahsildar Office,



Vedaraniyam,
Nagapattinam District.

4.Mr.N.Rathinasamy

5.Mr.N.Ramasamy

6.Mrs.Kanagavalli

7.Mr.G.Muruganantham

8.Mr.Sivakumar

9.M/s.Tamilarasi

10.Mrs.Malliga

11.Mrs.Sinthamani

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to cancel the Patta No.92, presently in the name of 6th to 9th respondent's father Ganesan, Patta No.621 presently in the name of 4th and 5th respondent, Patta no.645, presently in the name of the 4th respondent, and instead grant a joint patta in the name of all the legal heirs of deceased Natesa Gowndar in pursuance of the representation dated 07.12.2022 sent by the petitioner.

For Petitioner

: Mr.G.K.Gaarkey Chandhar

For R1 to R3

: Mr.D.Ravichander,
Special Government Pleader

For R4 to R11

: Mr.D.Vairamoorthy



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COMMON ORDER

It is the case of the petitioner that he has inherited right of property with reference to the property described in the writ petition. The grievances of the writ petitioner is that the respondents 4 -11 has fraudulently registered a document denying the property right of the writ petitioner.

2. The learned counsel for the petitioner mainly contended that the property right of the petitioner was infringed at the instance of the respondents 4 to 11 and the document was registered on the same date. Therefore, for cancellation of fraudulent document registered by the respondents 4 to 11, the petitioner has submitted an application on 07.12.2022 before the District Registrar. The District Registrar has not considered the application and thus, the petitioner has filed this writ petition.

3. The learned Special Government Pleader appearing for the 1st to 3rd respondents raised an objection mainly on the ground that the complaint given by the petitioner is not falling within the ambit of fraud, which is to



be defined under Section 77-A of the Registration Act and thus, the petitioner has to approach the competent civil court of law.

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4. The complaint dated 07.12.2022 filed by the petitioner to the competent authorities reveals that the father of the writ petitioner acquired right of property and therefore, the petitioner is also having right in respect of the said property. In order to deprive the father of the writ petitioner, the respondents 4 to 11 has fraudulently registered the document including the share of the father of the petitioner and the petitioner. Therefore, the petitioner has filed the complaint.

5. Whether the father of the writ petitioner is having property right or not cannot be decided by the District Registrar. The civil right between the parties cannot be adjudicated under Section 77-A of the Registration Act under the guise of the 'fraud'. The definition of fraud cannot be expanded so as to include each and every fraud committed in respect of the property right, the fraud in common parlance is to be defined in territorial manner and fraud in the context of Section 77-A of the Registration Act is to be defined with reference to Section 32 to 36 and 39 of the Registration Act



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and therefore, it is apparent on record, regarding the procedures, identification and presentation of document for registration are established, then alone an enquiry is to be conducted by conducting summary proceedings and the District Registrar is empowered to cancel the document. If any dispute exist between the parties, which is civil in nature, then the parties are to be relegated to approach the competent Civil Court of law.

6. In respect of fraud in general, threefold actions are permissible to the aggrieved person. The person aggrieved may prosecute the offender under the law. An aggrieved person can approach the competent Civil Court of law for the purpose of establishing his civil rights. Thirdly, he can submit a complaint before the District Registrar to cancel the document. Threefold actions are permissible simultaneously as far as the complaint under Section 77-A of the Registration Act is concerned. If a fraud is identified, within the ambit of the provisions of the Registration Act, then the District Registrar is competent to cancel the document. In respect of the civil rights or fraud in general sense then the parties are to be relegated to approach the competent Civil Court forum.



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7. The scope of Section 77-A of the Registration Act is limited, since the District Registrar is empowered to conduct summary proceedings. Through summary proceedings, the civil rights cannot be decided. The civil courts are conducting trial natured proceedings, wherein the parties would get ample opportunities to prove their case through documents and evidences. Therefore, the procedures under the Code of Civil Procedure and the summary proceedings under the Registration Act are no way connected and cannot be compared at all. Therefore, the District Registrars are expected to exercise restrained in entertaining the complaint under Section 77-A of the Act.

8. High Court while issuing a direction to conduct summary proceedings has to look into nature of the complaint. If the complaint involves disputes of civil nature, then the parties are to be relegated to approach the competent court of law and if the complaint pertains to fraud within the ambit of the provisions of the Registration Act, then alone a direction is to be issued to the competent authorities to conduct summary proceedings and pass appropriate orders. Merely issuing a direction to consider the complaint / representation would do no service to the cause of



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justice and the parties will be back again to the High Court by filing another writ petition and there will be no possibility of end of litigations between the parties.

9. Therefore, the High Court has to ascertain whether the complaint is entertainable before the District Registrar under Section 77-A of the Registration Act for the purpose of issuing a direction. In the present case, the complaint filed by the petitioner reveals that the civil dispute exist between the parties and the civil rights are to be adjudicated, which cannot be done by the District Registrar under Section 77-A of the Registration Act. Thus, the petitioner is at liberty to approach the competent Civil Court of law for the purpose of establishing his right over the property in the manner known to law.

10. In view of the fact that this Court has relegated the petitioner to approach the civil court of law, the relief, as such sought for in the present writ petitions cannot be granted. Necessary changes in the revenue records are to be made only after resolving the issues through the competent Civil Court of law.



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Accordingly, these writ petitions stands disposed of. No costs.

14.07.2023

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Index : Yes

Speaking order

Neutral Citation : Yes

To

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S.M.SUBRAMANIAM, J.

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