



W.P.No.11420 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.11420 of 2023

Mahalakshmi @ Lakshmi

... Petitioner

Vs.

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

2. The District Registrar,
Salem East Registration District,
Salem Taluk, Salem - 636001.

3. Radhamani

4. Venkatesh

5. Gandhimathi

6. Ponnuvel

7. Mr.Soundararajan

8. Mr.Mathialagan

9. Mr.Selvam

10. Mrs. Jayanthi

... Respondents



W.P.No.11420 of 2023

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing the 2nd respondent to cancel the illegal sale deeds and sale agreement deed pertaining to the property bearing survey numbers nos. 103/1 and 91/2 vide Document No. 41/83 dated 26.5.1983 and document Nos.379/87, 380/87, 381/87, 383/87 dated 29.04.1987 and document No.1130/87, 1131/87 dated 30.11.1987 and document No.1229/2000 dated 13.07.2000, registered in Veerapandi Sub Registrar Office, fabricated by the husband of the 3rd respondent and father of the 4th and 5th respondents along with wife of the 6th respondent and jointly with the respondents along with wife of the 6th respondent and jointly with the respondents No.7 to 10 based on the petitioner's representation dated 13.03.2023 made to the 2nd respondent in person.

For Petitioner : Mr.C.Selvakumar

For Respondents :
(for R1 & R2) : Mr.D.Ravichander, Spl.G.P.
(for R3 to R5, R8 & R9) : No Appearance
(for R6) : Deceased
(for R7 & R10) : Mr.T.P.Manoharan, Senior Counsel, for
Mr.T.M.Naveen

ORDER

The writ on hand has been instituted to direct the second respondent to cancel the fabricated illegal sale deeds and sale agreement deed



W.P.No.11420 of 2023

pertaining to the property bearing survey numbers nos. 103/1 and 91/2 vide Document No. 41/83 dated 26.5.1983 and document Nos.379/87, 380/87, 381/87, 383/87 dated 29.04.1987 and document No.1130/87, 1131/87 dated 30.11.1987 and document No.1229/2000 dated 13.07.2000, registered in Veerapandi Sub Registrar Office

2.The petitioner states that she is the absolute owner of the property more fully described in the present writ petition. The petitioner submitted a complaint before the District Registrar under Section 77 (A) of the Registration Act to cancel 8 documents admittedly registered in the year 1983, 1987 & 2000.

3.The learned counsel for the petitioner states that those documents were registered fraudulently and therefore, the petitioner has chosen to give a complaint in view of insertion of Section 77(A) of the registration Act.

4.The learned Senior Counsel appearing on behalf of the respondents 7 and 10 raised an objection by stating that the petitioner's own mother before the Civil Court stated that all the documents were



W.P.No.11420 of 2023

executed by her and her husband and the second appeal in this regard is pending before the High Court of Madras. The petitioner is the second respondent in the Second Appeal. While so, the complaint filed by the petitioner before the District Registrar under the Registration Act is not entertainable.

5.Question arises, whether the documents registered in the year 1983, 1987 and 2000 can be cancelled at this length of time, more so, after a lapse of about 40 years.

6. The powers conferred to the District Registrar to cancel the document under the grounds of fraud or impersonation cannot be expanded by adjudicating the title, ownership or disputed issues between the parties. The District Registrars are empowered to conduct summary proceedings and if the allegations i.e. fraud or impersonation are apparent on the face of the record, then alone the documents registered are to be cancelled but not otherwise. Therefore, the District Registrars cannot conduct a trial natured proceedings by adjudicating the title deeds or other documents produced by the respective parties. Only if *prima facie* case has been established for cancellation on the ground of fraud or impersonation, then alone the



W.P.No.11420 of 2023

District Registrar has to pass orders for cancellation of document.

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7. In the present case, several litigations were pending between the parties. The petitioner is referring various other documents for the purpose of establishing the ground of fraud. The ground of fraud with reference to the Registration Act cannot be compared with the fraud under the common parlance and the scope cannot be expanded by conferring the powers of Civil Courts on the District Registrar, since the Registration Act contemplates summary proceedings. A distinction is to be drawn, in respect of the complaint filed to cancel the document on the ground of fraud or impersonation.

8. It is relevant to consider Order VI Rule 4 of the Code of Civil Procedure which enumerates 'Particulars to be given where necessary' -
“In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”



W.P.No.11420 of 2023

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9. Therefore, it is mandatory that the party pleading fraud should plead properly and establish their case through documents. When the Code of Civil Procedure contemplates that the persons pleading fraud should establish through pleading and documents. Such a procedure cannot be adopted by the District Registrar under the Registration Act since summary proceedings are contemplated. Thus, the District Registrar is duty bound to draw a distinction between the summary proceeding and the trial natured proceedings with reference to the Registration Act and the Code of Civil Procedure. Whenever adjudication of various documents regarding fraudulent activities are to be established, the parties are to be relegated to the Civil Court for adjudication by establishing the ground of fraud or impersonation or otherwise.

10. Cancellation of a document has got a larger repercussion on the civil rights of the persons. Property right is a constitutional right conferred under Article 300A of the Constitution of India. Such a constitutional right can be interfered only by the authority of law and certainly not through the summary proceedings. Property right if infringed by conducting a summary proceedings on the hands of the District Registrar, the same would result in



W.P.No.11420 of 2023

an unconstitutionality and therefore, the scope of the powers under the Registration Act to the District Registrars cannot be expanded for the purpose of adjudication of civil disputes or the civil rights, which is conferred through the conveyances, documents etc.

11. A distinction is to be drawn with reference to the procedures contemplated under the Code of Civil Procedure and the Registration Act since the consequences of cancellation of any document is causing infringement of property right directly. For example, any person executing a sale deed gets a property right. Once the property right is acquired by him through the sale deed, such right becomes a constitutional right. Thus, the said right can be taken away only by the authority of law. Such an authority of law must provide complete opportunity to the parties to adjudicate the issues based on the documents and evidences. The powers for adjudication of such nature is conferred to the Court of law. Thus, the said powers conferred on the Court of law cannot be transferred or conferred to the District Registrar under the provisions of the Registration Act and more so, such District Registrars are neither legally trained nor authorised to conduct such judicial proceedings. The Registrars are Quasi-Judicial Authorities.



W.P.No.11420 of 2023

WEB COPY

12. Pertinently, Chapter V Section 31 of the Specific Relief Act, 1963 contemplates 'When cancellation may be ordered'. Sub-section (1) of Section 31 stipulates *“Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.”*

13. In view of the provisions of the Code of Civil Procedure and Specific relief Act, the Competent Civil Court of Law is concerned to adjudicate the disputed facts between the parties by framing issues and by conducting trials, so as to consider the validity of the documents registered under the Registration Act. Once the Competent Civil Court of Law declares that a registered document is null and void and invalid, thereafter under Section 89(4) of the Registration Act read with Rule 89 of the Civil Rules of Practice, the Registering Authority is bound to register the decree passed by the Civil Court in Book No.1. The mechanism provided under the Code of Civil Procedure, Specific Relief Act and Civil Rules of Practice at no circumstances be diluted in view of the provisions of the



W.P.No.11420 of 2023

Registration Act by indirectly conferring the powers of the Civil Court on

the District Registrar to invalidate the documents. Thus, the scope under the Registration Act to cancel the documents on the ground of fraud or impersonation is undoubtedly limited. While conducting a summary enquiry, if the District Registrar finds that there is a *prima facie* proof to establish fraud or impersonation, then alone the document is to be cancelled. Therefore, in respect of any iota of doubt on the *prima facie* case, the District Registrar is not empowered to adjudicate the issues on merits and is bound to relegate the parties to the Civil Court of law on adjudication. Comprehensive procedures contemplated under the Code of Civil Procedure, Civil Rule of Practice and the Specific Relief Act provides liberty to all the parties to establish and defend their case by producing documents and adducing evidence. Such a right of adjudication cannot be taken away by allowing the Registrar to declare the registered documents as null and void.

14. Section 22(B) of the Registration Act reads as under:

“22.B. Refusal to register forged documents and other documents prohibited by law – Notwithstanding anything contained in this Act, the registering officer shall refuse to



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W.P.No.11420 of 2023

register the following documents, namely:

- 1. forged document;*
- 2. document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force;*
- 3. document relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal;*
- 4. any other document as the State Government may, by notification, specify.”*

The very insertion of Tamil Nadu Act 41 of 2022 dated 16.08.2022, amplifies that registration of a fraud document and certain document prohibited under law are to be refused. Refusal of registration would arise only in respect of documents presented after amendment. Therefore, in respect of documents already registered, the District Registrar cannot have power to cancel the document, wherein the allegations of fraud or impersonation have been raised. Thus, the provisions cannot have retrospective effect, so as to confer the power on the District Registrar to adjudicate the documents, whichever is registered prior to the amendment.



W.P.No.11420 of 2023

All those cases have to be relegated to the Competent Civil Court of Law for adjudication.

15. Rule 55 of the Registration Rules reads as under:

55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:-

- (a) that the parties appearing or about to appear before him are not the persons they profess to be;*
- (b) that the document is forged;*
- (c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;*
- (d) that the executing party is not really dead, as alleged by the party applying for registration; or*
- (e) that the executing party is a minor or an idiot or a lunatic.*

16. Amendment made in Section 22-B of the Registration Act goes along with Rule 55 of the Registration Rules. The Registering Authority, on receipt of any document for registration, if finds forgery or registered



W.P.No.11420 of 2023

through any unauthorised person is empowered to refuse registration. The circumstances as narrated under Rule 55 of the Registration Rules also to be read along with the amended provision of Section 22-B of the Registration Act. Holistic reading of the above provisions would indicate that the Registering Authority is empowered to refuse registration if the document presented are found to be forged or impersonated.

17.In the present case, the parties have already approached the Civil Court and the Second Appeal is subjudised before the High Court of Madras. The writ petitioner is also a party to the Civil proceedings and therefore, the District Registrar is not empowered to entertain a complaint under section 77 (A) of the Act. If at all, any grievances arises, the petitioner has to adjudicate the same in the second appeal or in the manner know to law as the case may be.

18.With these observations, the writ petition stands **dismissed**. No costs.

(sha)
Index : Yes
Speaking Order
Neutral Citation : Yes

30.06.2023



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To

1. The Inspector General of Registration,
Santhome High Road, Chennai.
2. The District Registrar,
Salem East Registration District,
Salem Taluk, Salem - 636001.



W.P.No.11420 of 2023



WEB COPY



W.P.No.11420 of 2023

S.M.SUBRAMANIAM. J.,

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W.P.No.11420 of 2023

30.06.2023