



WEB COPY



W.P.No.16999 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.16999 of 2023

M.Revathy

Vs

... Petitioner

- 1.The Inspector General of Registration,
Inspector General of Registration Office,
No.100, Santhome High Road,
Mailapure, Chennai – 28.
- 2.The District Registrar,
O/o.District Registrar Office,
Nethaji Road, Sakkarakuppam,
Jolarpettai, Thirupathur District – 635 851.
- 3.The Sub Registrar,
Vaniyambadi Sub Registrar Office,
Vaniyambadi Taluk,
Thirupathur District – 635 857.
- 4.The District Collector,
O/o District Collector Office,
Thirupathur, Thirupathur District – 635 601.
- 5.The District Revenue Officer,
O/o District Revenue Officer,
Thirupathur, Thirupathur – 635 601.



W.P.No.16999 of 2023

6.V.Susilabai
7.V.Raviravo
8.P.Santhi
9.R.Kavitha
10.P.Santhoseravo
11.S.Puspththaravo
12.M.Thirupathi

... Respondents

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 consider the petitioner representation dated 12.05.2023 to cancel the following Five registered Documents viz., Document No.5264/2015, 6086/2015, 6087/2015, 5874/2016, 6543/2018.

For Petitioner : Mr.M.Murugesan

For Respondents : Mr.G.Krishna Raja
Special Government Pleader
for R1 to R5

ORDER

The relief sought for in the present writ petition is to direct the 2nd respondent to consider the petitioner's representation dated 12.05.2023 to cancel five registered documents viz., Document Nos.5264/2015, 6086/2015, 6087/2015, 5874/2016, 6543/2018.



W.P.No.16999 of 2023

WEB COPY

2. The petitioner states that her father Mr.Mohan Rao died leaving behind her mother. The petitioner succeeded the share of her father in the family property and a settlement deed was executed subsequently in her name. The petitioner states that she is in possession of the subject property and the dispute arose between the petitioner and the family members who all are arrayed as respondents 6 to 12.

3. The learned counsel for the petitioner mainly contended that the petitioner sent a representation to cancel the fraudulent deeds executed by the family members. The representation/complaint was given to the Sub Registrar and the District Registrar. However, no action has been taken and therefore, the petitioner is constrained to move the present writ petition.

4. The learned Special Government Pleader appearing for respondents 1 to 5 by referring the representation submitted by the writ petitioner on 12.05.2023, made a submission that there is a civil dispute pending between the parties. It is not in dispute that a civil suit was instituted and that being



W.P.No.16999 of 2023

the factum, the District Registrar may not be in a position to consider the representation of the petitioner.

5. 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 District Registrar has to pass orders for cancellation of document.

6. 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



W.P.No.16999 of 2023

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.

7. 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.”*

8. Therefore, it is mandatory that the party pleading fraud should plead properly and establish through documents. When the Code of Civil Procedure contemplates that the persons pleading fraud should establish



W.P.No.16999 of 2023

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.

9. 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 an unconstitutionality and therefore, the scope of the powers under the Registration Act to the District Registrars cannot be expanded for the



W.P.No.16999 of 2023

purpose of adjudication of civil disputes or the civil rights, which is conferred through the conveyances, documents etc.

10. 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.16999 of 2023

11. 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.”*

12. 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



W.P.No.16999 of 2023

no circumstances be diluted in view of the provisions of the 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.



WEB COPY



W.P.No.16999 of 2023

13. 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 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



W.P.No.16999 of 2023

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

14. 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;*



W.P.No.16999 of 2023

(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.

15. 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 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.

16. It is just and necessary for the Inspector General of Registration to issue appropriate guidelines to all the District Registrars explaining their powers to conduct summary proceedings, while entertaining a complaint from any person to cancel the document on the ground of fraud or impersonation. In the absence of any such uniformity, there is a larger scope



W.P.No.16999 of 2023

for inconsistency and possibility of infringement of property right of the citizen, since infringement would lead to unconstitutionality. It is imminent to issue such guidelines without causing any loss of time.

17. In the writ on hand, disputed issues exists between the parties. Thus, the Registrar may not be in a position to adjudicate the complaint given by the petitioner, by conducting summary proceedings. The documents sought to be cancelled by the petitioner in his complaint had been registered in the year 2015, 2016 and 2018 prior to the amendment of Section 22(B) of the Registration Act. At the time of registration of disputed documents, there was no provision to entertain any complaint for cancelling the registered documents. Normally, amendment to the Statutes would have 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. Hundreds and hundreds of documents registered prior to the amendments will be placed for adjudication before the Registrar to cancel such documents even on personal or on varieties of



W.P.No.16999 of 2023

reasons. Therefore, in the absence of any provisions to apply 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. Admittedly, there is no specific and explicit provision to entertain complaint with retrospective effect. In view of the facts and circumstances, the petitioner has to establish her Civil Rights through Court of law and thereafter, if required, she has to approach the Registrar for annulling the documents based on the decree, if any passed by the Competent Court of Law.

18. With the above observations, the Writ Petition stands disposed of. However, there shall be no order as to costs.

08.06.2023

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

Sgl/Jeni

14/16



W.P.No.16999 of 2023

To

WEB COPY

- 1.The Inspector General of Registration,
Inspector General of Registration Office,
No.100, Santhome High Road,
Mailapure, Chennai – 28.
- 2.The District Registrar,
O/o.District Registrar Office,
Nethaji Road, Sakkarakuppam,
Jolarpettai, Thirupathur District – 635 851.
- 3.The Sub Registrar,
Vaniyambadi Sub Registrar Office,
Vaniyambadi Taluk,
Thirupathur District – 635 857.
- 4.The District Collector,
O/o District Collector Office,
Thirupathur, Thirupathur District – 635 601.
- 5.The District Revenue Officer,
O/o District Revenue Officer,
Thirupathur, Thirupathur – 635 601.



WEB COPY



W.P.No.16999 of 2023

S.M.SUBRAMANIAM, J.

Sgl/Jeni

W.P.No.16999 of 2023

08.06.2023