



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.18814 of 2023

1.A.Shanthi

2.A.Vasuki

Petitioners

vs.

1.The District Registrar,
Thiruvallur District,
Chennai – 602 001.

2.The Sub-Registrar,
Ponneri,
Thiruvallur District,
Chennai – 601 204.

3.D.Ravanammal

4.D.Venkatasubramaniam

5.D.Nageswara Rao

6.D.Surendra Babu

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the Respondent No. 1 to consider the representation dated 24.04.2023 and to cancel the document bearing No. 3613/2009 on the file of the Respondent No.2 under Section 77A of the



For Petitioner : Ms.N.Iswarya for
Mr.A.Ashwinkumar

For Respondents : Mr.N.Naveen Kumar
Government Advocate for R1 and R2

ORDER

This writ petition has been filed for a direction to the 1st respondent to consider the representation made by the petitioner on 24.04.2023, wherein, the petitioner has sought for cancellation of the Document bearing Registration No.3613 of 2009 under Section 77A of the Registration Act, 1908.

2.Heard Ms.N.Iswarya, learned counsel appearing on behalf of the petitioner and Mr.N.Naveen Kumar, learned Government Advocate appearing on behalf of the 1st and 2nd respondents.

3.In the considered view of this Court, there is already an interim order passed by this Court in W.P.(MD).Nos.14546 of 2022 etc., dated 27.03.2023, wherein, the Registrars were directed to await for further orders of the Larger Bench and not to take any further action. For proper appreciation, the entire interim order is extracted hereunder:



has arisen for consideration is the invocation of the provision under Section 77A of the Registration Act, 1908, vis-a-vis the non-invocation of such provision by the registering authorities.

2. During the course of arguments, learned counsels had put forth a contention that documents which were executed prior to the introduction of Section 77A of the Registration Act, were also interfered with by the registering authorities. It was complained that such interference constituted direct violation of an order of a learned Single Judge of this Court, which judgment shall be referred herein after, who held that the provision is only prospective in nature and not retrospective in nature.

3. To counter that particular argument, learned counsels have also brought to my notice, the opinion of another learned Single Judge of this Court who had held that Section 77A introduced in the Indian Registration Act, 1908 would also apply retrospectively.

4. Thus even on the face of it there seems to be conflict of opinion between two learned Single Judges.

5. It is also imperative that, while resolving that particular conundrum, an authoritative pronouncement is also laid on what actually is a fraudulent document or a forged document. The parameters surrounding that particular aspect will have to be examined. In order to clarify that particular aspect, it would only be appropriate that the matters are discussed in detail.

6. Let me take resort to, as a guiding factor, a



judgment reported in AIR 1960 Madras 1, Muppudathi Pillai V. Krishnaswami Pillai and others. This was a judgment was rendered by a Hon'ble Full Bench of the Madras High Court. I must point out with some pride that in 2021 (4) SCC 786, Deccan Paper Mills Co. Ltd., Vs Regency Mahavir Properties, the Supreme Court while dealing with an allied issue, categorized this particular judgment of the Full Bench as an 'instructive' judgment and later while extracting the relevant portions had referred to the particular portion as a very 'important' paragraph of the said judgment. It is seen that the ration laid down by the Full Bench will have to be examined in detail to determine as to when a document can be categorized as void or voidable. This is the fundamental premise by which any document which is complained of having been unlawfully registered should be first examined.

7. The other aspect is that the aspect of fraud. In the order of the Hon'ble Supreme Court in AIR 1994 (SC) 853, [S.P.Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by LRs and others it had been categorically stated that the principle of "finality of litigation" cannot be pressed to the extent of absurdity that it becomes an instrument of fraud in the hands of dishonest litigants. It had been stated that fraud, permeates every solemn act.

8. The moot question which then arises for consideration is, if a document is held to have been registered fraudulently, then, whether the issue of limitation can be pressed into play by either side.

9. Every Court is not just a Court of law but a Court of Justice. When it becomes evident that a document had



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been presented for registration fraudulently, then, can the Court close its eyes and permit such fraud to continue to subsist or should it screen out only such documents which were pointed out within the period of limitation.

10. These are all issues which have to be decided before determining whether Section 77A of the Act, as introduced in the Registration Act, 1908 would have retrospective effect or prospective effect.

*11. A learned Single Judge of this Court (G.R.Swaminathan, J.) in **W.P.(MD)No.6947 of 2019** in the case of **E.Geetha Helan Alexandria and others Vs The Joint Sub Registrar No.II, Dindigul Sub Registrar Office, Dindigul** and others, by an order dated 02.01.2023, when called upon to consider the question of cancellation of a registered document under Section 77A, had observed as follows:*

" 6.The next question that arises is whether the petitioners can fall back on Section 77-A of the Registration Act. It reads as follows:- "

77-A. Cancellation of registered documents in certain cases.---

(1) The Registrar, either suo motu or on a complaint received from any person, is of the opinion, that registration of a document is made in contravention of Section 22-A or Section 22-B, shall issue a notice to the executant and all the parties to the document and parties to subsequent documents, if any, and all other person who, in the opinion of the Registrar, may be affected by the cancellation of the



document, to show cause as to why the registration of the document shall not be cancelled. On consideration of reply, if any received therefor, the Registrar may cancel the registration of the document and cause to enter such cancellation in the relevant books and indexes.

(2) The power under sub-section(1) may also be exercised by the Inspector General of Registration." The amendment was introduced vide Tamilnadu Act 41 of 2022. It came into force on 16.08.2022. The Hon'ble Supreme Court in **CIT v. Vatika Township (P)Ltd., (2015) 1 SCC 1** held that the established Rule is that unless a contrary intention appears, a legislation presumed not to be intended to have a retrospective operation and that law passed today cannot apply to events of the past. Section 77-A has not been made retrospective.

7. Question arose if a settlement deed executed before the coming into force of the Senior Citizens Act can be cancelled by invoking Section 23 of the said Act. A learned Judge of this Court in the decision reported in (2018) 6 CTC 21 (**K.Neelavathy v. The District Magistrate**) held that the power under Section 23 of the Act cannot be exercised in respect of a document that was executed before the Act came into force. The same approach has to be adopted here also. The petitioners cannot take advantage of circulars that were issued subsequently or statutory amendments that came into force later. It is true that the I.G. of Registration issued circulars and instructions under Section 68 of the Registration Act after withdrawing circular No.67 dated 03.11.2011. Such instructions came to be issued in 2018. If Section 77-A of the Registration Act cannot be retrospective, I fail to understand as to how such circulars can be



retrospective. The circulars are also prospective and will apply to documents registered after the said circulars were issued. Section 77-A of the Act will apply only in respect of documents that were registered after 16.08.2022.

9. I hold that the document registered in the year 2013 cannot be cancelled by the authorities under the Registration Act, 1908 on the strength of the subsequently issued circulars / subsequently introduced statutory amendments...."

(Emphasis supplied)

12. In effect, the learned Single Judge was of the categorical opinion that the provision is only prospective in nature and not retrospective in nature.

13. Unfortunately, the attention of the learned Single Judge was not brought to an earlier judgment of another learned Single Judge (R.Suresh Kumar, J.), which was dated 29.10.2021 and which had been rendered in the Principal Bench.

*14. In a batch of writ petitions in **W.P.Nos. 28728 of 2018 batch, S.Kanniammal @ Mangai Vs State of Tamilnadu and others**, the learned Single Judge had examined the provisions of Section 77A of the Registration Act and had also discussed the relevant case laws on the subject and examined the provisions of fraud and forgery as given in the Indian Penal Code and had held as follows:*

"91. Though certain other documents had been mentioned, in respect of the present issue, we need not traverse into those aspects. So, if the Registrar comes to a conclusion that a particular document presented before him is a forged document, he can refuse to register the same. If he refused to register the same



under Section 22- B, then, appeal can very well be filed against such refusal under Section 72 of the 1908 Act. At the same time, if already a document is registered which comes to the notice to the persons concerned including the parties who may be affected by the cancellation of such documents and after getting show cause from them, such document may be cancelled. Such power is now vested with the Registrar concerned under Section 77-A as inserted by the amending Act.

92. Once a cancellation is effected by the Registrar concerned under Section 77-A, appeal would lie against such order, to be preferred by any aggrieved party, under Section 77-B to the Inspector General of Registration, within 30 days from the cancellation of the document. Since the power under Section 77-A can also be exercised by the Inspector General of Registration under sub-section 2 of Section 77-A, if any order is passed by Inspector General of Registration under sub-section 2 of Section 77- A, appeal would lie before the State Government under Sub- Section 2 of Section 77-B."

(Emphasis supplied)

15. It is thus seen that the learned Single Judge was of the opinion that when a document already registered, comes to the notice of the registrar, either suo motu or by a complaint then, after giving notice to the persons concerned, including the parties who may be affected by cancellation of such document and after getting show cause from then, 'such documents may be cancelled'.

16. Here, the learned Single Judge had not expressed any opinion on the time limit within which such



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documents should be examined. He had not stated whether documents registered before the introduction of Section 77A can also be cancelled or only those documents which are complained of, after the introduction of Section 77A alone can be cancelled. It can however be safely understood that the learned Judge was of the opinion that the provision is also retrospective and for this, the learned Judge had widened the power of the Sub Registrar to include also suo motu powers. An authority can exercise suo motu power only when the statute specifically arms such authority with such a power. No quasi judicial authority can take suo motu notice of any act unless specific authority is given by legislation.

17. In this connection it would be only appropriate that reference is made to Section 77A of the Registration Act.

" 77-A. Cancellation of registered documents in certain cases.---

(1) The Registrar, either suo motu or on a complaint received from any person, is of the opinion, that registration of a document is made in contravention of Section 22-A or Section 22-B, shall issue a notice to the executant and all the parties to the document and parties to subsequent documents, if any, and all other person who, in the opinion of the Registrar, may be affected by the cancellation of the document, to show cause as to why the registration of the document shall not be cancelled. On consideration of reply, if any received therefor, the Registrar may cancel the registration of the document and cause to enter such cancellation in the relevant books and indexes.

(2) The power under sub-section(1) may also be exercised by the Inspector General of Registration."



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18. Now let me go back to the Full Bench Judgment, with which I had started. In *AIR 1960 Madras 1, Muppudathi Pillai V. Krishnaswami Pillai and others*, the Hon'ble Full Bench of the Madras High Court had examined the equivalent provisions of the Specific Relief Act of 1877 and the provisions of the Specific Relief Act, 1963 with respect to voidability of instruments had held as follows:

"11. It may be noticed that the above section applies not merely to the case of an instrument which is voidable but also one that is void. Section 35 provides for the case of rescission of voidable contracts. It is evident that Section 39 covers not only a case contemplated under Section 35, but also wider field, that is, a case of a void document, which under the law need not be set aside.

12. The principle is that such document **though not necessary to be set aside may, if left outstanding, be a source of potential mischief**. The jurisdiction under Section 39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence, etc. and as it has been stated **it was to prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated**. A party against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared. Section 39 embodies the principle by which he is allowed to anticipate the



danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in quia timet actions.

*The provisions of S.39 make it clear that **three conditions are requisite for the exercise of the jurisdiction to cancel an instrument** : (1) **the instrument is void or voidable against the plaintiff;** (2) **plaintiff may reasonably apprehend serious injury by the instrument being left outstanding;** (2) **in the circumstances of the case the Court considers it proper to grant this relief of preventive justice.** On the third aspect of the question the English and American authorities held that where the document is void on its face the Court would not exercise its jurisdiction while it would if it were not so apparent. In India it is a matter entirely for the discretion of the Court.*

14. The question that has to be considered depends on the first and second conditions set out above. As the principle is one of potential mischief, by the document remaining outstanding, it stands to reason the executant of the document should be either the plaintiff or a person who can in certain circumstances bind him. It is only then it could be said that the instrument is voidable by or void against him. The second aspect of the matter emphasises that principle. For there can be no apprehension if a mere third party, asserting a hostile title creates a document. Thus relief under S.39 would be granted only in respect of an instrument likely to affect the title of the plaintiff and not of an instrument executed by a stranger to that title.

15. Let us take an example a trespasser



purporting to convey the property in his own right and not in the right of the owner. In such a case a mere cancellation of the document would not remove the cloud occasioned by the assertion of a hostile title, as such a document even if cancelled would not remove the assertion of the hostile title. In that case it would be the title that has got to be judicially adjudicated and declared, and a mere cancellation of an instrument would not achieve the object. S.42 of the Specific Relief Act would apply to such a case. The remedy under S.39 is to remove a cloud upon the title, by removing a potential danger but it does not envisage an adjudication between competing titles.

*That can relate only to instruments executed or purported to be executed by a party or by any person who can bind him in certain circumstances. It is only in such cases that it can be said there is a cloud on his title and an apprehension that if the instrument is left out-standing it may be a source of danger. Such cases may arise in the following circumstances: A party executing the document, or a principal in respect of a document executed by his agent, or a minor in respect of a document executed by his guardian de jure or de facto, a reversioner in respect of a document executed by the holder of the anterior limited estate, a real owner in respect of a document executed by the benemidar etc. **This right has also been recognised in respect of forged instruments which could be cancelled by a party on whose behalf it is purported to be executed.** In all these cases there is no question of a document by a stranger to the title. The title is the same. But in the case of a person asserting hostile title, the source or claim of title is different. It cannot be said to be void against the plaintiff as the term void*



or voidable implies that but for the vitiating factor it would be binding on him, that is, he was a party to the contract.

16. There is one other reason for this conclusion. S.39 empowers **the Court after adjudicating the instrument to be void to order the instrument to be delivered up and cancelled**. If the sale deed is or purported to have been executed by a party, the instrument on cancellation could be directed to be delivered over to the plaintiff. If on the other hand such an instrument is executed by a trespasser or person claiming adversely to the plaintiff it is not possible to conceive the instrument being delivered over not to the executant but his rival, the plaintiff. (Emphasis Supplied)

19. A full Bench of the Andhra Pradesh High Court in **Yanala Malleshwari V. Ananthula Sayamma, (2006) SCC Online AP 909: AIR 2007 AP 57**, followed the ratio laid by the Full Bench of the Madras High Court in **Muppudathi Pillai (referred supra)** and then stated the law thus:

"33. The law, therefore, may be taken as well settled that in all cases of void or voidable transactions, a suit for cancellation of a deed is not maintainable. In a case where immovable property is transferred by a person without authority to a third person, it is no answer to say that the true owner who has authority and entitlement to transfer can file a suit under Section 31 of the Specific Relief Act for the simple reason that such a suit is not maintainable. Further, in case of an instrument, which is void or voidable against executant, a suit would be



maintainable for cancellation of such instrument and can be decreed only when it is adjudicated by the competent Court that such instrument is void or voidable and that if such instrument is left to exist, it would cause serious injury to the true owner."

20. In view of the reasonings of the Full Bench and in view of the conflicting views of the two learned Single Judges the following issues are referred for due consideration by a Larger Bench of this Court.

- i) whether the recitals in a document presented for registration, can be examined to determine that such document was fraudulently executed or registered;*
- ii) whether a document in which the recitals alone are questioned can be considered only as voidable which would normally necessitate the filing of the suit to set aside the particular document or whether even those documents can be cancelled by the Sub Registrar under Section 77A of the Registration Act;*
- iii) whether exercise of power under Section 77A must be restricted to registration of documents in contravention to Section 22-A or 22-B of Registration Act, 1908 alone?*
- iv) whether the exercise of such power under Section 77A of the Registration Act can be prospective in nature or retrospective in nature?*

21. To determine these issues, the Registry may place all the writ petitions before the Hon'ble Administrative Judge for constitution of a Larger Bench to examine the issues in detail.



22. Till a decision is rendered by the Larger Bench, let no further action be taken by any of the Sub Registrars, who may await further orders of the Larger Bench.

4. In the light of the above order, there is no scope for considering the representation made by the petitioner at present and the petitioner has to necessarily await for the final orders to be passed by the Larger Bench on the issue. Hence, this writ petition is closed for the present.

5. It is brought to the notice of this Court that in spite of the above order passed by this Court, the District Registrars are entertaining the applications under Section 77A of the Registration Act and even orders are passed. It is not known as to whether this order was circulated to all the District Registrars in State of Tamil Nadu. In view of the above order, this Court once again reiterates that the District Registrars across Tamil Nadu shall not take any further action on the application submitted under Section 77A of the Registration Act, till a final decision is rendered by the Larger Bench. The Inspector General of Registration is directed to issue a Circular in this regard to all the District Registrars across the State of Tamil Nadu immediately.



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N. ANAND VENKATESH, J.

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6.A copy of this order shall also be marked to the Inspector General of Registration, Tamil Nadu.

27.06.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
SSR

Note: Issue Order Copy today (ie., 27.06.2023)

To

1.The District Registrar,
Thiruvallur District,
Chennai – 602 001.

2.The Sub-Registrar,
Ponneri,
Thiruvallur District,
Chennai – 601 204.

3.The Inspector General of Registration, Tamil Nadu.

W.P No.18814 of 2023