



WEB COPY

W.P.No.21304 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21304 of 2023

D.Srinivasan
S/o. Dhurvasal
Kamatchi Amman Koil Street,
Machanur Village and Post,
K.V. Kuppam Taluk,
Vellore District 632 209.

Rep. by Power of Attorney Holder
Mr. V. Santhosh Kumar
Son of Viswanathan
Residing at Periyapattarai,
Machanur Village and Post,
K.V. Kuppam Taluk, Vellore District.

... Petitioner

Vs.

- 1.The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai – 600 004.
- 2.The District Registrar,
Vellore District,
Vellore.
- 3.The Sub Registrar,
Gudiyatham,
Gudiyatham Taluk,
Vellore District.



4.The Sub Registrar,
K.V. Kuppam Taluk,
K.V. Kuppam,
Vellore District.

5.D.Munirathinam

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent herein to dispose the revision filed by the petitioner herein dated 10.11.2022.

For Petitioner : Mr.N.Sampath

For R1 to R4 : Mr.D.Ravichander
Special Government Pleader

ORDER

The relief sought for in the present writ petition is to direct the 1st respondent to consider and pass orders on the revision filed by the petitioner dated 10.11.2022.

2. The representation submitted by the writ petitioner on 10.11.2022 and 14.02.2022 reveals that the petitioner submitted an application to cancel the documents of the year 1989 and 1992. Totally four documents are sought to be cancelled under Section 77-A of the Registration Act.



WEB COPY

3. Question arises, whether the fraud now alleged by the petitioner can be considered by the District Registrar after a lapse of about 24 years from the date of registration of the document under Section 77-A of the Act, which was inserted in the year 2022 in Registration Act.

4. The learned counsel for the petitioner states that the documents were registered by force and coercion and therefore, petitioner submitted an application to cancel the registered documents.

5. Fraud, coercion or force at this length of time, if raised, cannot be adjudicated by the District Registrar under Section 77-A of the Registration Act. Fraud in common parlance cannot be compared with reference to the fraud in the context of Section 77-A of the Registration Act.

6. The powers conferred to the District Registrar to cancel the document under the grounds of fraud or impersonation cannot be expanded for 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.

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



WEB COPY

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.”

9. 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 through pleadings 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 to the Civil Court for adjudication by establishing the grounds of fraud or impersonation or otherwise.



WEB COPY

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 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.

12. Pertinently, Chapter V under 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



WEB COPY

W.P.No.21304 of



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 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

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 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 forged 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. 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;*



WEB COPY

W.P.No.21304 of



- (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 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. 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 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.

18. In respect of the present writ petition, there is a dispute existing between the parties. Thus, the District Registrar may not be in a position to adjudicate the complaint given by the writ petitioner through summary proceedings. The documents sought to be cancelled was registered during the year 1989 and 1992 and this being the factum, the amendments effected in the year 2022 by inserting Section 77-A of the Registration Act, cannot be given effect retrospectively, so as to cancel the documents registered long before.

19. If at all any grievance exist, the petitioner has to approach the Competent Civil Court of Law for the purpose of redressal of their grievance. Thus, merely directing the authorities to dispose of the complaint would do no service to the cause of justice. The litigants will be back again to the High Court by filing another writ petition. Therefore, the petitioner has to approach the Competent Court.



20. Accordingly, this Writ Petition stands dismissed. No costs.

WEB COPY

19.07.2023

Jeni

Index : Yes

Neutral Citation : Yes

Speaking order

To

1.The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai – 600 004.

2.The District Registrar,
Vellore District,
Vellore.

3.The Sub Registrar,
Gudiyatham,
Gudiyatham Taluk,
Vellore District.

4.The Sub Registrar,
K.V. Kuppam Taluk,
K.V. Kuppam,
Vellore District.



WEB COPY

W.P.No.21304 of



S.M.SUBRAMANIAM, J.

Jeni

W.P.No.21304 of 2023

19.07.2023