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WP No.22962 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 04-08-2023**

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**WP No.22962 of 2023**

V.S.Rajathilagam

... Petitioner

Vs.

1.The Inspector General,  
Department of Registration,  
Pattinapakkam,  
Santhome,  
Raja Annamalaipuram,  
Chennai-600 028.

2.The District Registrar,  
Office of District Registrar,  
No.37QM+WJ, First Floor,  
NSC Bose Road,  
Kuralagam,  
Chennai-600 003.

3.The Sub Registrar,  
Office of Sub-Registrar,  
No.46WJ+873, 1<sup>st</sup> Street,  
Roja Nagar,  
Madhavaram,  
Chennai-600 060.



4.Gopalraja

5.Doraiswamy Raja

6.S.Madhusudhana Raja

7.S.Balakrishna Raja

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to cancel the Sale Deed dated 05.08.1985 standing in the names of the respondents 4 to 7 registered as document No.3080 of 1985 in the Office of the Sub Registrar, Sembiam, based on the petitioner's representation dated 06.05.2023.

For Petitioner : Mr.P.Satheesh Kumar

For Respondents-1 to 3 : Mr.C.Jayaprakash,  
Government Advocate.

### **ORDER**

The relief sought for in the present writ petition is to direct the respondents 1 to 3 to cancel the Sale Deed dated 05.08.1985 standing in the names of the respondents 4 to 7 registered as document No.3080 of 1985 in the Office of the Sub Registrar, Sembiam, based on the petitioner's



representation dated 06.05.2023.

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2. The relief as such sought for in the present writ petition is misconceived, since the petitioner seeks direction to cancel the Sale Deed of the year 1985.

3. Merely based on the representation submitted by the petitioner, a Sale Deed registered otherwise under the provisions of the Registration Act, 1908, cannot be cancelled by submitting a representation.

4. By virtue of an amendment under Section 77-A of the Registration Act, 1908, a document registered fraudulently or by impersonation may be cancelled by conducting summary proceedings by the District Registrar.

5. There is no express provision conferring powers on the District Registrar to cancel the documents, which were registered prior to the amendment.



6. The retrospective application of Section 77-A of the Registration Act, has not been explicitly provided. Thus the power, which is not conferred, cannot be impliedly exercised by the District Registrar for the purpose of cancelling the documents, which were registered prior to the amendment and insertion of Section 77-A of the Act.

7. The issues raised in the present writ petition is no more res integra and it was considered by this Court in WP No.19239 of 2022 dated 25.07.2023, wherein in paragraph-13, this Court observed as under:-

*“13. Yet another apprehension is that the District Registrars are not empowered to adjudicate the disputed facts. Under Section 77A of the Act, they are empowered to conduct summary proceedings and to identify fraud or impersonation with reference to the provisions of the Registration Act, more specifically, the procedures as contemplated under the Act and Rules. In the event of allowing the District Registrars to adjudicate the documents registered prior to the amendment, necessarily, they will*



*have to adjudicate the disputed facts and the background of the title and otherwise, which cannot be done. More so, fraud was not defined prior to the insertion of Sections 22A, 22B and 77A of the Act. This Court, in the case of M.Revathy vs. The Inspector General of Registration, Chennai and others passed in WP No.16999 of 2023, dated 08.06.2023, had dealt with this issue and held as follows:~*

*“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*



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*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. 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)*



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*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 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 to the Civil Court for adjudication by establishing the*



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



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*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.*

*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*



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*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 Registration Act by indirectly conferring the powers*



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*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.*

*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 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*



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*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.*

*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.”*

8. In view of the above facts and circumstances, the present writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the parties are at liberty to workout their remedies before the Competent Civil Court of law in the manner contemplated.

**04-08-2023**

Index : Yes/No  
Internet: Yes/No  
Speaking order/Non-Speaking order  
Neutral Citation : Yes/No  
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To

1.The Inspector General,  
Department of Registration,  
Pattinapakkam,  
Santhome,  
Raja Annamalaipuram,  
Chennai-600 028.



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2. The District Registrar,  
Office of District Registrar,  
No.37QM+WJ, First Floor,  
NSC Bose Road,  
Kuralagam,  
Chennai-600 003.

3. The Sub Registrar,  
Office of Sub-Registrar,  
No.46WJ+873, 1<sup>st</sup> Street,  
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**S.M.SUBRAMANIAM, J.**

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