



Order dated 07.11.2023 in
W.P.No.28912 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.11.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.28912 of 2023

Mrs.S.P.Parvathi

.. Petitioner

Vs.

1. Inspector General of Registration,
No.100, Santhome High Road,
Mullima Nagar,
Mandavelipakkam,
Raja Annamalaipuram,
Chennai-600 028.

2. The District Registrar (Administration),
The Office of the District Registrar,
Coimbatore, Coimbatore District.

3. The Sub-Registrar,
The Office of the Sub-Registrar,
Periyanaickenpalayam,
Coimbatore.

4. Mr.J.B.Kullamanathan

5. K.Arumugam

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorarified Mandamus to call for the
records of the second respondent, vide order No.10238/Aa.1/2021, dated

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30.08.2022 and quash the same and direct the third respondent to remove the remarks/entries of the impugned order made in Book No.1, which is reflected in the encumbrance certificate of sale deed No.2765 of 1987, dated 08.12.1987.

For petitioner : Mr.T.V.Suresh Kumar

For respondents: Mr.Yogesh Kannadasan, Spl.G.P. for RR-1 to 3

Mr.L.Mouli for R-4

Notice issued - service awaited - R-5

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent, vide order No.10238/Aa.1/2021, dated 30.08.2022 and quash the same and direct the third respondent to remove the remarks/entries of the impugned order made in Book No.1, which is reflected in the Encumbrance Certificate of Sale Deed No.2765 of 1987, dated 08.12.1987.

2. Shorn of the facts in the averments made in the affidavit are as under:

(a) The petitioner is the sole and absolute owner of the land

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measuring to an extent of 2388 Sq.Ft. situated at Plot No.73, Krishasamy Nagar, comprised in Survey Nos.337/1, 337/2, 328, 338 and 325, Keeranatham Village, Coimbatore North Taluk, Coimbatore District. The petitioner had purchased the said land through a registered Sale Deed, dated 21.01.2009, registered as Document No.315/2009 at the Sub-Registrar, Periyanaayakkanpalayam, from the fifth respondent, with due sale consideration. The fifth respondent purchased the said property from Mr.Krishna Gounder, Mr.Dhandapani, Mr.Manikam and Mr.Sanmugam, through their Power Agent Mr.Arukktti, vide sale deed dated 08.12.1987, registered as Document No.2765/1987 on the file of the Sub-Registrar, Periyanaayakkanpalayam. Ever-since from the date of purchase, the petitioner is in enjoyment and absolute possession of the property, free from all encumbrances. Upon verification of the Encumbrance Certificate, the petitioner came to know that the sale deed dated 08.12.1987, registered as Document No.2765/1987 executed in favour of the fifth respondent, who is the petitioner's vendor, had been declared as fraudulent document, vide impugned order dated 30.08.2022 issued under No.10238/Aa1/2021 by the second respondent based on the complaint filed by the fourth respondent. The said sale deed No.2765/1987 is the parent document and belonged to

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the petitioner's vendor being the fifth respondent. The petitioner purchased the subject property based on the said sale deed No.2765/1987 from the petitioner's vendor (fifth respondent herein).

(b) Before passing the impugned order, the second respondent had not served any notice to the petitioner. The petitioner is the subsequent purchaser of the said sale deed, in No.2765/1987. The impugned order had been passed on 30.08.2022 after insertion of Section 77-A of the Registration Act, 1908, i.e. with effect from 16.08.2022. After the said amendment, the second respondent shall serve notice to all the parties to the document and subsequent purchasers. However, the second respondent did not serve any notice to the petitioner before declaring the said document as fraudulent document and violating the principles of natural justice. Even though on the date of passing the impugned order, Section 77-A of the Act, was in force. However, the second respondent passed the impugned order without any reference to Section 77-A and referred a Circular in No.41530/U1/2017, dated 08.11.2017 and 25.03.2022, which is issued prior to the amendment. The Tamil Nadu Registration Department issued the said Circular on 08.11.2017, 31.07.2018 and 25.03.2022 with regard to the declaration of fraudulent

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documents.

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(c) It is settled legal position that all the circulars have only prospective effect and there is no retrospective effect. If the documents registered on or after the circular date, the second respondent can follow the circular and declare the documents as fraudulent one. The second respondent had declared the sale deed in this case as a fraudulent one, which was registered in the year 1987, i.e. prior to the said circular. The second respondent has no authority to invoke the said circular and declare the said sale deed as fraudulent document.

(d) As per the impugned order, the property covered under the sale deed No.2765 of 1987, had already been sold to the fourth respondent's father Late Mr.Belli, vide sale deed dated 24.08.1987, registered as Document No.1876 of 1987 by the Power of Attorney Mr,Arukkutti. The same Power of Attorney had also executed another sale deed for the very same property to his vendor being the fifth respondent. Since two sale deeds have been registered for the same property, the second respondent has declared the sale deed No,2765 of 1987 as fraudulent document, which was registered subsequent to the sale deed No.1876 of 1987. As per the impugned order, during the proceedings, a notice was also sent to the

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petitioner's vendor being the fifth respondent, and he had not appeared for the enquiry and another notice was sent to the said Power of Attorney and one Mr.Mohan informed that his father Mr.Arukkutti died and submitted the Death Certificate to the second respondent. No notice had been served on the petitioner, since he is the subsequent purchaser of the said property. The second respondent declared the sale deed No.2765 of 1987 as a fraudulent document on the sole ground that the same is registered subsequent to the sale deed No.1876 of 1987.

(e) Further, the second respondent, without any adjudication or verification of the signature/authenticity of the Power of Attorney in the said sale deed No.1876 of 1987 and merely the sale deed No.2765 of 1987 is registered subsequently, cannot conclude that it is a fraudulent document. Further, the said Power of Attorney also died.

(f) It is the grievance of the petitioner that before passing the impugned order, the second respondent had not provided any opportunity to the petitioner and also violated the principles of natural justice. Even though the impugned order has not been issued to the petitioner, it has declared his previous/parent document as fraudulent document, which directly affected the petitioner's title of the property. Hence, the petitioner has filed the

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present Writ Petition for the relief stated supra.

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3. The respondents 1 to 3 have filed counter affidavit stating that the petitioner is the sole owner of the land measuring an extent of 2388 Sq.Ft. situated at Plot No.73, Krishnaswamy Nagar, comprised in Survey No.337/1, 337/2, 328, 338 and 325, Keerthanathan Village, Coimbatore North Taluk, Coimbatore District. This property was purchased by the petitioner through a registered sale deed dated 21.09.2009, vide document No.315/2009 at the office of the Sub-Registrar, Periyanaikkanpalayam from the fifth respondent with due sale consideration. The fifth respondent had purchased the said property from Mr.Krishna Gounder, Mr.Dhandapani, Mr.Manikam and Mr.Shanmugam through their Power of Attorney Mr.Arukkutti, vide sale deed dated 08.12.1987, registered as Document No.2765 of 1987 on the file of the Sub-Registrar, Periyanaikkanpalayam. It is only through the order dated 30.08.2022 passed by the second respondent, the petitioner came to know that the said sale deed dated 08.12.1987, registered as Document No.2765/1987, was executed in favour of the fifth respondent and had been declared as a fraudulent document. The impugned order in No.10238/Aa1/2021, dated 30.08.2022 was passed

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by the second respondent under Section 68(2) of the Indian Stamp Act. The order passed by the second respondent is legitimate and since complaint was given under Section 68(2) of the said Act, the order was passed under that Section and it is valid in the eye of law. The averment of the petitioner that the order ought to have been passed under Section 77-A of the Registration Act, is baseless. The petitioner failed and neglected to give any reason whatsoever for his omission and commission regarding the particular aspects and the writ petition lacks merit and the petitioner has come to Court with unclean hands suppressing the true facts. The balance of convenience and existence of prima-facie case are not in favour of the petitioner.

4. Learned counsel for the petitioner submitted that the grievance of the petitioner is that without serving any notice on the petitioner, his prior title deed was cancelled by the third respondent and since the petitioner is the subsequent purchaser, the respondents ought to have issued notice to the petitioner and hence, the impugned order is liable to be quashed and the matter may be remitted back to the authority concerned to given notice to the petitioner and also on the private parties, if any or rival parties, if any and only after giving notice to the petitioner, the authority shall pass

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appropriate orders on merits and in accordance with law.

5. Heard both sides and perused the materials available on record.

6. The only grievance of the petitioner is that without giving notice and without giving any opportunity of hearing, his prior title deed was cancelled. The petitioner has nothing to do with the prior document and its genuineness. The petitioner is only entitled to seek the relief under the possession and therefore, the same can be decided only before the Civil Court and as to whether the petitioner is aware of the defective title or not, and that he is the bona-fide purchaser or not. The main grievance of the petitioner is that opportunity of hearing was not afforded to him before the impugned order is passed, and there is also violation of principles of natural justice and hence, he has approached this Court. The cancellation of the prior title deed based on the Power of Attorney, has nothing to do with the petitioner.

7. However, in order to give opportunity, the second respondent is hereby directed to give notice to the petitioner and the private respondents and the rival claimants, if any, and consider the matter and pass appropriate orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. Though the vendor

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of the petitioner has sent a notice to the fifth respondent based on the address mentioned in the document, the same was not served and it returned with endorsement as 'no such person'. It clearly shows that the vendor colluded with the petitioner and is evading from the proceedings before the authority and also this Court.

8. Considering the facts and circumstances of the case, the second respondent is also directed to issue notice to all rival claimants, including the petitioner, the private respondents 4 and 5 and others, if any, and pass appropriate orders, as directed above.

9. The Writ Petition is disposed of with the above direction. There shall be no order as to costs.

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CS

To

1. Inspector General of Registration,
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P. VELMURUGAN, J

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