



W.P.No. 28927 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	14.12.2023
Orders Pronounced on	21.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

W.P.No. 28927 of 2023
and
W.M.P.No. 28520 of 2023

F. Basha

... petitioner

Vs.

1. The Inspector General of Registrations,
No. 100, Santhome High Road,
Chennai, Tamil Nadu – 600 028.
2. Deputy Inspector General of Registrations,
Kadalur Zone, Kadalur.
3. The District Registrar (Ku.Po.)
Registration Department,
Kallakurichi.
4. The Sub Registrar
North Ponparappi,
Kallakurichi.
5. Nawabjan

... Respondents

Writ Petition filed under Article 226 of Constitution of India for



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the issuance of Writ of Certiorari, calling for the records pertaining to the impugned order dated 24.04.2023 vide Na.Ka.No. 6448/Vu/2022 passed by the second respondent and quash the same.

For petitioner : Mr. J.Ramesh

For Respondents : Mr. Yogesh Kannadasan
Special Government Pleader
(for R1 to R4)

Mr. N.Suresh (for R5)

ORDER

The petitioner has filed the Writ Petition for issuance of a Certiorari calling for the records pertaining to the impugned order dated 24.04.2023 in Na.Ka.No.6448/Vu/2022 passed by the second respondent and quash the same.

2. As per the affidavit filed by the writ petitioner, the case of the petitioner is that he is the absolute owner of the property and he acquired title based on the settlement deed executed by his father by name Mr. M.Fareedhkhan under registered settlement deed dated 03.02.2022 an extent of 2.55 and ½ cent in Survey Nos. 7/8A, 7/10A and Survey Nos.



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7/9A. The petitioner's father derived title from the release deed dated 30.12.2021. Based on the Settlement deed, the petitioner derived the title and executed Power of Attorney in favour of one B. Poonguzhali, the registered power deed dated 25.03.2022. Based on the Power of Attorney, the power agent of the petitioner executed sale deed in respect of the 2.11 cents and out of 2.55 ½ cents under registered sale deed dated 26.04.2022 in favour of one Mrs. Selvambal. Further, it is stated that one Mr.Nawabjan filed a complaint before the third respondent to cancel the above said release deed in favour his father. Subsequently, the Settlement deed was executed by father in favour of the petitioner and the Power of Attorney was said to have been executed by the petitioner in favour of B. Poonguzhali and settlement deed was said to have been executed by the Power agent of the petitioner to Mrs. Selvambal, stating that the above document is alleged to be invalid.

3. Based on that complaint, the third respondent conducted an enquiry and passed order dated 05.12.2022. Challenging the said order, the petitioner filed an appeal before the second respondent and the second respondent, without conducting any detailed enquiry, passed an order mechanically on 24.04.2023. The petitioner has challenged the said order



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passed by the second respondent, dated 24.04.2023. Impugned order left

this petitioner to file present writ Petition. Further, it is stated that the fifth respondent herein relied on a fabricated/created Document said to have been executed on 03.02.1981. Even, the said document does not find place in the schedule of the property under dispute. Based on the strength of the said document, he filed a complaints before the third respondent. For cancellation of the above said documents, he filed a complaint. The second and third respondents also, without locus-standi, invoked Section 77-A of the Registration Act and passed the impugned order. During the pendency of the appeal pending with the second respondent, the fourth respondent entertained Document No. 3821/2022 dated 19.12.2022, and Document No. 1454/2023 dated 19.12.2022, which are pending and executed to and in favour of one Kumar and it is said to have been executed by the fifth respondent. Since the matter has not attained finality, the above said documents have been executed by the fifth respondent in favour of the said Kumar has to be cancelled. The petitioner has filed the present Writ Petition challenging the impugned order passed by the second respondent.

4. One of the official respondents namely the third respondent



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has filed a counter-affidavit stating that as per the Tamil Nadu e-

Registration Rules, 2019 “ the users will be allowed to access the e-

Registration module through the website of the Registration Department

for creation of documents. On completion of data entry, the document so

created will be displayed on the screen. Corrections (or) amendments can

be made in the document if required at that stage. No corrections (or)

amendments shall be possible after the document is taken up by the office

of the Sub-Registrar concerned for processing.” Further, it is stated that

the petitioner grandmother one Mrs. Hanifa Bee had executed release deed

in favour of her brother Mr. Abdul Sukur, who is the father of the fifth

respondent and another brother Mr.Abdul Wakab. The release deed did

not contain the schedule of the properties. It is registered in Book -IV as

Document No.1/1981. Since the release deed did not contain the schedule

of properties, it cannot be brought under Index-II and as such, it is not

reflected in the Encumbrance Certificate. Since, the release deed did not

contain the schedule of property, as per Section 51 of the Registration Act

1908, the above said release deed was registered in Book IV. Therefore,

the third respondent has considered all the documents and materials and

passed the order when the petitioner filed an appeal. The second

respondent considered all the facts and as well as the legal provisions and



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passed the order and there is not valid ground to allow the Writ Petition.

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5. The private respondent, i.e. fifth respondent has filed the counter stating that the petitioner has no locus-standi to challenge the order of the second respondent. The petitioner has indulged in suppression of material facts. Further, he is also involved in creating false documents and on the basis of it, he had sought to register the fraudulent documents. Further, it is stated that originally, the subject matter of the property is covered under the writ that belonged to one Hajiran Bee. The petitioner's grandmother is Hanifa Bee, who was one of the daughters of Hajiran Bee and Abdul Suban. The said Hanifa Bee has a sister by name Sakina Bee and their brothers are Abdul Sukur and Abdul Wahab. The Said Hanifa Bee and her sister and brother inherited the properties from their parents. The Hajiran Bee, Abdul Suban and Hanifa Bee had executed release deed in favour of their brother, who is the father of the fifth respondent herein by Abdul Sukur on 03.02.1981 and executed release deed in his favour who is none other than the father of the fifth respondent herein under registered release deed dated 03.02.1981. Hanifa Bee also executed release deed in favour of the fifth respondent is father and his brother Abdul Wahab inherited properties from Harijan Bee and Abdul Suban and



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they were the absolute properties of the father of the fifth respondent and

Abdul Sukur and his uncle Abdul Wahab.

6. Based on the above documents, Patta to the properties also stood only in the name of Abdul Sukur and Abdul Wahab and they had enjoyed the properties. The said Hanifa Bee died on 04.10.2009 and thereafter, Hanifa Bee's son i.e. the father of the petitioner viz., Farid Khan and the petitioner by criminal conspiracy and by creating false documents had submitted a petition for transfer of Patta and for sub division of the properties and for grant of separate Patta in the name of the dead person Hanifa Bee on 01.11.2021. On the same date, on 01.11.2021, the transfer of Patta was sought to be effected in the name of the father of the petitioner Farid Khan and his sister Fathima Bee, Mariyam Bee and Miyam Bee. When the Hanifa Bee herself had released her rights in the properties in the year 1981 itself by giving general relinquishment of all the properties and Hanifa Bee died in the year 2009 itself, application could not have been submitted by her and the petitioner and his father had indulged in impersonation and thereby, the Patta was sought to be mutated in favour of the said Farid Khan and his sisters. The falsity, illegality and criminal conspiracy commenced from 01.11.2021. Thereafter, the father of



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the petitioner created release deed from his sisters on 30.12.2021 and on

the basis of the release deeds, the father of the petitioner was said to have

created sale deed in favour of one Selvambal dated 26.04.2022. Hence, all

the documents are nothing but fraudulent documents. Further, it is stated

that the petitioner and his father within a short period of 4 to 5 months,

created all documents. Therefore, the fifth respondent challenged those

documents before the third respondent by filing a petition to conduct an

enquiry and pass appropriate orders and the Revenue Records also are

sought to be tampered and mutated and without any proper enquiry, the

petitioner and his father fraudulently created documents and also

challenged the Revenue Records behind the fifth respondent. The third

respondent considered all the above aspects and passed the order. The

petitioner filed an appeal before the second respondent. The second

respondent had considered the matter and also dismissed the appeal.

7. An enquiry was conducted prior to the order passed in Writ Petition in W.P.No. 14546 of 2022 dated 24.07.2023. Section 77-A of the Registration Act is not at all invoked even prior to that itself, the third respondent conducted an enquiry and passed the order, the fifth respondent also sold the properties to one Kumar on 19.12.2022 and he



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has not been impleaded in the Writ Petition. Further, it is stated that the father of the petitioner having indulged in creating documents by falsely giving petitions in the name of dead persons, and thereafter created a series of documents, is not entitled to any relief before this Court. The petitioner also suppressed material facts relating to the execution of release deed by his grandmother in the year 1981 and application was submitted in the name of dead person viz., Hanifa Bee and hence the petitioner is not entitled to the relief sought for.

8. Learned Counsel for the writ petitioner submitted that the father of the petitioner is the absolute owner of the property and he derived title under release deed dated 30.12.2021 and he executed settlement in favour of the petitioner under registered settlement deed dated 03.02.2022 and thereafter, the petitioner sold the property to Mrs.Selvamabal through the Power Agent and the registered sale deed dated 26.04.2022 and all of sudden, the Fifth Respondent filed the petition before the third respondent to cancel all those documents and he relied on the release deed dated 03.02.1981 alleging that the Hanifa Bee, being grandmother of the petitioner, was said to have executed release deed in favour of the father and uncle of the 5th respondent. The grandmother of



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the petitioner never executed any release deed and even in the document dated 03.02.1981, it does not contain any schedule of property and it was also not registered in the proper book and even the registration department did not follow the procedure contemplated under the Registration Act. The documents registered in Book No.1 and without registering the same, they registered under Book No.4. Even they did not follow the procedures and all the non-testamentary documents relating to the immovable property had to be registered in Book No.1 and the testamentary documents like Will, had to be registered in Book No.4. He would submit that even the document is not valid and no survey number was found there and there was also no schedule of properties and no four boundaries were mentioned in the said document and even the document was not properly stamped.

9. Therefore, the documents were fraudulently created and therefore, it was not made proper entry in the proper register, which itself created a doubt and the documents also are not properly stamped and the provisions of the Registration Act had not been properly followed. Therefore, the said document release deed said to have been executed by the Hanifa Bee in favour of the father and uncle of the fifth respondent, is not valid one and based on that invalid document, they cannot claim any



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right and title. Further, it is submitted that the father of the petitioner obtained the property by way of release deed and thereafter, he executed settlement deed in favour of the writ petitioner and subsequently, writ petitioner sold the properties to the third party and the second and third respondents without considering the facts regarding right and title, simply cancelled the deed. He further submitted that regarding the validity of Section 77-A of the Registration Act, now pending with the Division Bench, the impugned order passed by the second respondent is not valid, and without any authority, he has passed the order and without giving opportunity to the petitioner, the second respondent passed the impugned order, which is not valid and the same is liable to be quashed.

10. Learned counsel for the fifth respondent submitted that the property originally belonged to the grandfather of the fifth respondent and grandmother of the fifth respondent, namely Hajiran Bee and Abdul Suban. The grandmother of the petitioner, i.e., Hanifa Bee is one of the daughters of the above said Hajiran Bee and Abdul Suban. The said Hanifa Bee had sister, by name Sakina Bee and their brothers are Abdul Sukur and Abdul Wahab. The said Hanifa Bee and her sister and her brothers inherited the properties from their parents namely the said Hajiran



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Bee and Abdul Suban. During the lifetime of Hanifa Bee, she executed

release deed in favour of her brothers, by name Abdul Sukur and Abdul

Wahab. Abdul Sukur is none other than the father of the fifth respondent.

Hanifa Bee is none other than the grandmother of the writ petitioner.

Therefore, the grandmother of the writ petitioner released all her right in the family property in favour of her brothers and she lost her right and

after execution of the registered release deed, dated 03.02.1981. The said

Hanifa Bee also died on 04.10.2009 and her property stands in the name

of the father of the 5th respondent and his uncle Abdul Wahab. Therefore,

Hanifa Bee lost her right and title and the father of the petitioner had right

and title over the period of limitation. Further, he would submit after the

death of Hanifa Bee on 04.10.2009, father of the Writ petitioner created

document and he was said to have made application before the Revenue

Authority and as if that the Hanifa Bee gave a representation before the

Revenue Authority to include her name in the Patta and therefore, it is a

fraudulent document and that when the said Hanifa Bee who is the

grandmother of writ petitioner died on 04.10.2009 itself and therefore, the

document obtained subsequent to Hanifa Bee is not valid and neither the

petitioner nor his father derived any valid title. Therefore, all the

documents were said to have been executed by father of the writ petitioner



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and subsequently, the sale deed and power of attorney executed by the writ petitioner is not valid and subsequently, the sale deed is also not valid and therefore, the petitioner is not entitled to get relief as sought for in the writ petition.

11. Learned Special Government Pleader appearing for respondents 1 to 4 submitted that one Hanifa Bee was said to have executed release deed in favour of father of the fifth respondent and his uncle and registered release deed dated 03.02.1981. Since there is no schedule of property it was registered in Book No.4 maintained under Section 51 of Registration Act and further the application itself was given prior to the amendment of Section 77 came into force and therefore, Section 77-A would not be applicable to the present case and further, they followed the procedures and since the document was of the year 1981 is registered document and therefore, based on the registered document, the Hanifa Bee lost her right and therefore Hanifa Bee is not entitled in right in the property and therefore, once Hanifa Bee herself voluntarily released her right in the property, she lost her right in the property. Therefore, the petitioner's father has not derived any right and title from her mother and therefore, the documents said to have been executed by the petitioner is not



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valid and therefore, there is no merit in the writ petition. Therefore the Writ petition is liable to be dismissed.

12. Heard both sides and perused records. The case of the writ petitioner is that the father of the writ petitioner derived right and title of the subject matter of the properties under registered release deed dated 30.12.2021 and thereafter, he executed settlement deed in favour of the writ petitioner under registered settlement deed dated 24.04.2023. Thereafter, he executed Power of Attorney in favour of one B.Poonguzhali under registered Power of Attorney dated 25.03.2022. Based on the said Power of Attorney, the Power Agent sold the property to one Mrs. Selvambal under registered sale deed dated 26.04.2022. In the meanwhile, the 5th respondent filed a complaint before the third respondent stating that the father of the writ petitioner created fraudulent document and based on that, the above said document came into existence and therefore, the same has to be cancelled by stating that his father and uncle had the right and title over the said property. The petitioner's grandmother Hanifa Bee herself executed registered release deed dated 03.02.1981 and relinquished her all right and title over the family properties. Therefore, once she relinquished all her right, the father of the petitioner is not entitled to any



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right and title and further the grandmother of the petitioner Hanifa Bee herself died in the year 2009 and subsequently under forged documents the father of the petitioner mutated the Revenue Records in the name of the deceased Hanifa Bee and therefore, he gave a complaint and the third respondent considered all the facts and cancelled the document created by father of the petitioner and the petitioner.

13. Admittedly, the petitioner's grandmother is one Hanifa Bee. According to the fifth respondent, she executed release deed in favour of the father of the fifth respondent and his uncle under registered release deed dated 03.02.1981, since it was registered in the year 1981 and Revenue Records were also mutated and the name of the grandmother of the writ petitioner Hanifa Bee does not find place in the Revenue Records. The said release deed dated 03.02.1981 was executed 40 years prior to the filing of this writ petition under Section 90 of the Indian Evidence Act and if the document is existing more than 30 years, the signature found in the same is genuine, and unless contrary is proved in the manner known to law, and the petitioner cannot challenge the same before the registering authority and if at all the writ petitioner wants to challenge the document, the document is not valid and the document came into existence by way of



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forging the document and they can question the documents only before the

Competent Civil Court. Further based on those documents, according to

the fifth respondent, the Revenue Records also were mutated and the name

of the Hanifa Bee did not find place till her death in the year 2009. During

the lifetime of Hanifa Bee, she did not challenge the same. Therefore, it is

only regarding the genuineness of document and enjoyment of the property

and also the Revenue Records and subsequent change of the Revenue

Records in the name of Hanifa Bee and also with the joint Patta with other

persons, whether Hanifa Bee had filed any application before the Revenue

Authority to include her name or not ? Whether the property was in

enjoyment of the petitioners or the fifth respondent? and Whether the

document executed by the father of the petitioner and respondent? The

petitioner being genuine, have got any better title or the fifth respondent

has got right and title and in possession of the property and the document

executed by the fifth respondent is valid or not. It cannot be decided by the

Registrar simply under Section 77-A of the Registration Act. The enquiry

under Section 77-A which is only a summary procedure and it can be only

decided regarding registration of document and genuineness of the

document. On an analysis, the entire affidavit filed by the writ petitioner

and counter filed by the private respondents, right and title and enjoyment



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of the property, are involved. Therefore, under these circumstances, neither the Registrar nor the Writ Court can decide it. Therefore, based on the materials, the third respondent passed the order and the second respondent by considering the entire materials and they cancelled the documents. However, it is for the petitioner to approach the Civil Court and establish his right and title and challenging the validity of the release deed is said to have executed by the Hanifa Bee under registered release deed dated 03.02.1981 and therefore this Court finds that it is appropriate that the petitioner is at liberty to work out his remedy before the Civil Court.

14. With the above direction, this Writ petition is dismissed and consequently connected miscellaneous petition is closed. No cost.

21.12.2023

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Index: Yes/No

Speaking Order : Yes/No

Neutral case citation: Yes/No



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To
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1. The Inspector General of Registrations,
No. 100, Santhome High Road,
Chennai, Tamil Nadu – 600 028.
2. Deputy Inspector General of Registrations,
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P. VELMURUGAN, J.

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Pre-delivery Order in

W.P.No. 28927 of 2023

and

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Order pronounced on 21.12.2023