



W.A.(MD) Nos.260 and 261 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A.(MD) Nos.260 and 261 of 2023
and
C.M.P.(MD) Nos.3209, 3212, 3214 & 3215 of 2023**

P.Jeganathan

... Appellant
in W.A.(MD) No.260 of 2023

P.Rajasekar

... Appellant
in W.A.(MD) No.261 of 2023

-VS-

1. The Inspector General of Registration,
Door No. 100, Santhome High Road,
Foreshore Estate, Pattinapakkam,
Chennai - 600028.
2. The District Registrar (Administration),
Madurai South.
3. The Joint Sub Registrar No.1,
Madurai South.
4. The Executive Officer Cum Joint Commissioner,
Arulmighu Mariamman Temple,



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Teppakulam, Madurai - 625 009.

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... Respondents/
Respondents
(in both writ appeals)

Common Prayer:-

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 12.01.2023, passed in W.P.(MD) Nos.15128 and 15129 of 2022, on the file of this Court.

For Appellants : Mr. J.Barathan (in both writ appeals)

For Respondents : Mr.Veera Kathiravan
Additional Advocate General

assisted by Mr.M.Prakash
Additional Government Pleader
for R1 to R3

Ms.N.Krishnaveni
Senior Counsel
for Mr.VR.Shanmuganathan for R4
(in both writ appeals)



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COMMON JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

These two appeals are filed at the instance of purchasers of immovable property from one Rajathi Ammal, wife of K.Marimuthu Pillai. The disputes centred around a Will said to have been executed by Marimuthu Pillai on 06.01.1985, the relinquishment of legacy executed by Maruthamuthu Pillai in favour of Rajathi Ammal on 05.07.1985 and the sale deeds executed by Rajathi Ammal in favour of the petitioners in the year 1990. It is not in dispute that the property is originally belonged to one Marimuthu Pillai who had executed a Will on 07.04.1983, according to the private respondents bequeathing the property to the fourth respondent and appointing his nephew Maruthamuthu Pillai to perform those charities or to be in administration of the properties. The Will also contains a prohibition against alienation. This Will was disputed by the wife of the executant, namely, Rajathi Ammal and at the panchayat, the legatee relinquished the legacy. Therefore, claiming that the property has vested in her as a wife of Marimuthu Pillai, she executed the sale deeds in favour of the petitioners. These sale deeds came to be executed in the year 1990.



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2. After the introduction of Section 77-A of the Registration Act, 1908 (for brevity “the Act”), the fourth respondent temple lodged a complaint with the District Registrar claiming that the property belongs to it and that the sale deeds executed in Parasala, Kerala, are fraudulent documents and therefore, they have to set aside. On receipt of the complaint, the District Registrar issued notices to the petitioners requiring them to appear. These notices are the subject matter of challenge in these writ petitions. The Writ Court, chose to dismiss the writ petitions on the ground that the Registrar has the power to conduct an inquiry and decide on the validity of the sale deeds. It is this order of the Writ Court is the subject matter of challenge in these appeals.

3. We have heard Mr.J.Barathan, learned counsel appearing for the appellants, Mr.Veera Kathiravan, learned Additional Advocate General appearing for respondents 1 to 3 and Ms.N.Krishnaveni, learned Senior Advocate appearing for the fourth respondent.



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4. Mr.Barathan, learned counsel appearing for the appellants would vehemently contend that Section 77-A of the Act entails cancellation of documents which are executed in violation of Sections 22-A and 22-B of the Act alone and not otherwise.

5. Section 22-A of the Act relates to properties belonging to State Government or the local authority or belonging to or endowed for the purpose of any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is applicable or donated for Bhoodan Yagna and other similar purposes.

6. Section 22-B(2) of the Act relates to the forged documents, the documents related to transaction which is prohibited, the transfer of immovable property which is attached permanently or provisionally by a competent authority by way of any Central Act or State Act for the time being in force or any court or tribunal or any other document specified by the Government by a notification.



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7. Therefore, unless the document comes within the scope of Section 22-A or 22-B, the District Registrar will not have the power to entertain the request for cancellation or enter upon an inquiry.

8. The claim of the temple in the case on hand is that it got the property under the Will of Marimuthu Pillai. That Will was disputed by the wife of Marimuthu Pillai and the legatee has relinquished the bequest. The wife of Marimuthu Pillai, namely, Rajathi Ammal, had exercised her proprietary right and sold the property as early as in the year 1990. It is almost after 32 years the temple seeks to lay a claim.

9. We are alive to the fact that Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for brevity “the HR&CE Act”) exempts the applicability of Limitation Act to temples or properties owned by the temples. Once the Registrar launches upon an inquiry into the question of validity of this instrument, he will have to necessarily decide the title of the temple under the Will, for which, he may have to decide as to whether there is an absolute dedication in favour of the temple or there is only a charge created over the



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property. The second question that would arise is the validity of the Will executed by Marimuthu Pillai. The third question that would arise is the validity of the relinquishment of the legacy by Maruthamuthu Pillai in favour of Rajathi Ammal. The fourth question that would arise is what is the nature of the property in the hands of Rajathi Ammal upon the legatee relinquishing the legacy.

10. It cannot be disputed that all these issues as stated above are highly technical and complicated legal issues which will have to be decided only by a legally trained mind. A District Registrar, in our opinion, cannot decide these issues. No doubt, the power is vested with the District Registrar to cancel the document but, the power of cancellation would be available only when the title of the temple is not disputed. If the title of the temple is disputed and the revenue records do not show that the property has been transferred in the name of the temple, the District Registrar cannot decide these questions and come to a conclusion as to whether the temple is the owner of the property or not. Unless the basic fact, namely, ownership of the temple or the religious institution or the State Government is admitted, Section 22-A of the Act cannot be said to be violated. It is for the temple to establish its title in a properly constituted civil suit



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11. Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondents 1 to 3 would submit that a circular has been issued by the Department, wherein, it has been stated that if the Registrar finds that the issue involves is a civil dispute, he can always refer the matter to the civil court. As pointed out by the Hon'ble Full Bench of this Court in *Periathambi Goundan v. District Revenue Officer, Coimbatore*, reported in *AIR 1980 Mad 180*, the risk of an Executive authority deciding the issue of jurisdiction wrongly and usurping the power of the civil court has to be avoided. The Full Bench in that context has observed as follows:-

“But that controversy cannot be said to be within the exclusive jurisdiction of the authorities functioning under the Act, because to hold so will enable the statutory authorities to assume jurisdiction by erroneously deciding the jurisdictional issue.”

12. Mr.Veera Kathiravan, however, would contend that the testator under the Will has created an endowment within the meaning of Section 6(19) of



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the HR&CE Act and therefore, the property would vest in the temple. We are unable to subscribe to that submission, in view of the peculiar facts of this case where, the legatee under the Will relinquished the legacy and the property has devolved on the wife of the original owner under law of succession. The question whether the property in the hands of Rajathi Ammal would be burdened with the conditions or kattalais or obligations under the Will is another important question of law. We do not think that the Registrar could be a proper person to address these questions. The argument that if the Registrar feels that there is a civil dispute involved, he can refer the matter to the civil court is not the answer to the contention that the Registrar has no jurisdiction to entertain the complaint. Moreover, a reading of the complaint would show that the document which also preceded on the footing that the document is a fraudulent document.

13. We find that this is a case where the facts disclosed existence of highly technical legal issues which cannot be conveniently decided by a District Registrar, who is not a legally trained mind. The contention of the learned Additional Advocate General that the writ petition itself has been filed against a show cause notice cannot be a ground to throw out the writ petition in a case of



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[R.S.M., J.]

[L.V.G., J.]

07.06.2023

NCC : Yes
Index : Yes
Internet : Yes
PKN

To:

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Foreshore Estate, Pattinapakkam,
Chennai - 600028.
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