



W.P(MD)Nos.4867 of 2023 & 17292 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)Nos.4867 of 2023 & 17292 of 2022

and

W.M.P(MD) Nos.12614 & 19488 of 2022

W.P(MD)No.4867 of 2023

S.Navin Rengasamy

... Petitioner

Vs.

- 1.The Foreigners Registration Officer,
The Bureau of Immigration,
East Block - VIII, Level -V,
Sector - I, RK Puram,
New Delhi - 66.
- 2.The Chief Immigration Officer/
Foreigners Regional Registration Officer,
The Bureau of Immigration,
Sastri Bhavan Annexe,
No.26, Haddows Road,
Nungambakkam,
Chennai - 600 006.



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3.The District Collector
Dindigul District,
Dindigul.

4.The District Superintendent of Police,
The Foreigner Registration Officer,
Dindigul District,
Dindigul.

5.Krishnapriya Parthasarathi

6.Parthasarathi ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 and 2 to dispose the petitioner's representation dated 07.10.2022 requesting to take appropriate action against the respondents 5 and 6 under the Foreigners Act, 2004 and to cancel their Visa issued under the Passport (Entry into India) Rules, 1950.

For Petitioner : Mr.K.Balasivasubramanian

For Respondents : Mr.K.R.Laxman - for R1 & R2

Mr.J.Ashok - for R3 & R4

Additional Government Pleader

Mr.C.Gangai Amaran - for R5



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W.P(MD)No.17292 of 2022

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S.Navin Rengasamy

... Petitioner

Vs.

1.The District Registrar,
Dindigul District,
Dindigul.

2.The Sub Registrar,
Iyyampalayam Sub Registration Office,
Dindigul District - 624 204.

3.R.Suresh

4.Krishnapriya Parthasarathy

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the impugned proceedings in Na.Ka. No.2132/M3/2022 dated 11.07.2022 on the file of the first respondent and quash the same and further directing the first respondent to cancel the registration of the Settlement Deed registered as Document No.1145/2019 registered on the file of second respondent.



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For Petitioner : Mr.Prabhu Rajadurai

For Respondents : Mr.C.Satheesh - for R1 & R2
Government Advocate

Mr.J.Lawrance - for R3

Mr.C.Gangai Amaran - for R4

COMMON ORDER

W.P(MD)No.4867 of 2023

The writ petition has been filed in the nature of a Mandamus seeking a direction against the respondents 1 and 2 namely, The Foreigners Registration Officer, the Bureau of Immigration, New Delhi and The Chief Immigration Officer / Foreigners Regional Registration Officer, the Bureau of Immigration, Chennai, to dispose of a representation given by the petitioner herein on 07.10.2022 and to take necessary action against the respondents 5 and 6 under the Foreigners Act, 2004 and to cancel their Visa issued under the passport (Entry into India) Rules, 1950.



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2. The father of the writ petitioner is one R.Suresh. It is claimed that he had only a life interest in the property consequent to a Will executed by his sister R.Jeyalakshmi on 10.08.2017. In that particular Will the property involved was described as schedule 'C'. In the property described as schedule 'C', the father of the petitioner was given life estate and after his life time, the property was to devolve on to the petitioner herein as absolute estate. The said Will was registered as document No.P74/2017 before the Sub Registrar, Ayyampalayam, Dindigul District. The property described as schedule 'C' is situated at Survey No.179/1 and measures 10 acres out of a larger area 12.10 acres at Chitharevu Village, Authoor Taluk, Dindigul District. It is claimed that they are agricultural lands.

3. The petitioner expected that since only a life interest was granted to the father, the property would thereafter, devolve absolutely, on to him. He has now questioned a settlement deed executed by his father in favour of the fifth respondent. Taking a ground that the fifth



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respondent, has violated the terms of Visa which had granted to her, the petitioner had given a representation on 07.10.2022.

4. Mr.K.R.Laxman, learned counsel for the respondents 1 and 2, however, received written instructions, wherein, it has been stated that the fifth respondent Krishnapriya Parthasarathi and her husband, sixth respondent Parthasarathi are citizens of United States of America and that, they had been granted, Overseas Citizenship of India cards. It is thus stated that having the benefit of such status they can always come to this country. It had therefore been stated that there is no question of cancellation of Visa.

W.P.(MD) No.17292 of 2022

5. The writ petitioner had also filed W.P.(MD) No.17292 of 2022 seeking cancellation of the very same settlement deed executed by his father R.Suresh in favour of Mrs.Krishnapriya Parthasarathi. In this writ petition his father had been impleaded as the third respondent and the settlee Mrs.Krishnapriya Parthasarathi had been impleaded as the fourth respondent.



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6. It had been complained that the father had no right, title or interest and therefore, could not have executed the settlement deed in favour of the fourth respondent. It is therefore stated that the said document, having been executed by a person who has no authority to execute such document and more particularly, had no authority to transfer title in favour of the fourth respondent, should be interfered with.

7. In this connection, the petitioner had given a complaint before the District Registrar, Dindigul District. The order passed by the District Registrar, Dindigul District, dated 11.07.2022 in Na.Ka.No. 2132/ஆ3/2022 is the subject matter of the present writ petition. By the said order, the District Registrar, had refused to cancel the document. It is seen that an appeal provision against the order is available before the Additional Inspector General of Registration at Madurai. However, without taking recourse to that particular appellate remedy, the present writ petition has been filed.



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8. It is contended by the learned counsel for the petitioner that the third respondent who had no right or title and had only a life interest over the property, had however, executed a settlement deed in favour of the fourth respondent without any authority. It is stated that it is evident on a reading of the Will executed by the sister of the third respondent that the third respondent only had a limited life estate and that these aspects have been overlooked by the first respondent in the impugned order. It is stated that the writ petition has been filed questioning the impugned order passed by the first respondent.

9. During the hearing of this Court, a request was placed by Mr.J.Lawrance, learned counsel for the third respondent, to file counter. It was also stated that further arguments will have to be advanced.

10. However, whether the document which had been executed as a settlement deed is a void document or a voidable document, will have to be examined only on a reading of the said document.



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11. A Full bench of the Madras High Court in the judgment reported in **AIR 1960 Madras 1, *Muppudathi Pillai V. Krishnaswami Pillai and others***, had examined the equivalent provisions of the Specific Relief Act of 1877 and the provisions of the Specific Relief Act, 1963 with respect to voidability of instruments and had held as follows:

"11. It may be noticed that the above section applies not merely to the case of an instrument which is voidable but also one that is void. Section 35 provides for the case of rescission of voidable contracts. It is evident that Section 39 covers not only a case contemplated under Section 35, but also wider field, that is, a case of a void document, which under the law need not be set aside.

*12. The principle is that such document **though not necessary to be set aside may, if left outstanding, be a source of potential mischief.** The jurisdiction under Section 39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence, etc. and as it has been stated **it was to prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated.** A party*



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against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared. Section 39 embodies the principle by which he is allowed to anticipate the danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in quia timet actions.

*The provisions of S.39 make it clear that **three conditions are requisite for the exercise of the jurisdiction to cancel an instrument : (1) the instrument is void or voidable against the plaintiff; (2) plaintiff may reasonably apprehend serious injury by the instrument being left outstanding; (2) in the circumstances of the case the Court considers it proper to grant this relief of preventive justice.** On the third aspect of the question the English and Americal authorities held that where the document is void on its face the Court would not exercise its jurisdiction while it would if it were not so apparent. In India it is a matter entirely for the discretion of the Court.*



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14. *The question that has to be considered depends on the first and second conditions set out above. As the principle is one of potential mischief, by the document remaining outstanding, it stands to reason the executant of the document should be either the plaintiff or a person who can in certain circumstances bind him. It is only then it could be said that the instrument is voidable by or void against him. The second aspect of the matter emphasises that principle. For there can be no apprehension if a mere third party, asserting a hostile title creates a document. Thus relief under S.39 would be granted only in respect of an instrument likely to affect the title of the plaintiff and not of an instrument executed by a stranger to that title.*

15. *Let us take an example a trespasser purporting to convey the property in his own right and not in the right of the owner. In such a case **a mere cancellation of the document would not remove the cloud occasioned by the assertion of a hostile title, as such a document even if cancelled would not remove the assertion of the hostile title. In that case it would be the title that has got to be judicially adjudicated and declared, and a mere cancellation of an***



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instrument would not achieve the object. S.42 of the Specific Relief Act would apply to such a case. The remedy under S.39 is to remove a cloud upon the title, by removing a potential danger but it does not envisage an adjudication between competing titles.

*That can relate only to instruments executed or purported to be executed by a party or by any person who can bind him in certain circumstances. It is only in such cases that it can be said there is a cloud on his title and an apprehension that if the instrument is left out-standing it may be a source of danger. Such cases may arise in the following circumstances: A party executing the document, or a principal in respect of a document executed by his agent, or a minor in respect of a document executed by his guardian de jure or de facto, a reversioner in respect of a document executed by the holder of the anterior limited estate, a real owner in respect of a document executed by the benemidar etc. **This right has also been recognised in respect of forged instruments which could be cancelled by a party on whose behalf it is purported to be executed.** In all these cases there is no question of a document by a stranger to the title. The title is the same. But in the case of a person asserting hostile*



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title, the source or claim of title is different. It cannot be said to be void against the plaintiff as the term void or voidable implies that but for the vitiating factor it would be binding on him, that is, he was a party to the contract.

*16. There is one other reason for this conclusion. S.39 empowers **the Court after adjudicating the instrument to be void to order the instrument to be delivered up and cancelled.** If the sale deed is or purported to have been executed by a party, the instrument on cancellation could be directed to be delivered over to the plaintiff. If on the other hand such an instrument is executed by a trespasser or person claiming adversely to the plaintiff it is not possible to conceive the instrument being delivered over not to the executant but his rival, the plaintiff.*

(emphasis supplied)

12. A Full Bench of the Andhra Pradesh High Court in ***Yanala Malleshwari Vs. Ananthula Sayamma, (2006) SCC Online AP 909: AIR 2007 AP 57***, followed the ratio laid by the Full Bench of the Madras High Court in ***Muppudathi Pillai (referred supra)*** and then



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stated the law thus :

"33. The law, therefore, may be taken as well settled that in all cases of void or voidable transactions, a suit for cancellation of a deed is not maintainable. In a case where immovable property is transferred by a person without authority to a third person, it is no answer to say that the true owner who has authority and entitlement to transfer can file a suit under Section 31 of the Specific Relief Act for the simple reason that such a suit is not maintainable. Further, in case of an instrument, which is void or voidable against executant, a suit would be maintainable for cancellation of such instrument and can be decreed only when it is adjudicated by the competent Court that such instrument is void or voidable and that if such instrument is left to exist, it would cause serious injury to the true owner."

13. This was a judgment was rendered by a Hon'ble Full Bench of the Madras High Court. I must point out with some pride that in **2021 (4) SCC 786, Deccan Paper Mills Co. Ltd., Vs. Regency Mahavir Properties**, the Supreme Court while dealing with an allied



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issue, categorized this particular judgment of the Full Bench as an *'instructive'* judgment and later while extracting the relevant portions had referred to the particular portion as a very *'important'* paragraph of the said judgment.

14. It is seen that the ratio laid down by the Full Bench will have to be examined in detail to determine when a document can be categorized as void or voidable. This is the fundamental premise by which any document which is complained of having been unlawfully registered should be first examined.

15. These are issues which will have to be examined and it will only be appropriate that the petitioner herein in W.P.(MD) No.17292 of 2022 files an appropriate appeal before the appropriate authority. The Writ Court can do justice while examining whether the third respondent had right and authority to execute a settlement deed since such examination would only be on a reading of the element without knowledge of the surrounding circumstances. If that exercise has to be



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done then the proper authority would be only the appellate authority in the order of hierarchy of the respondents herein. It may also only be appropriate that the petitioner takes up the issue by filing a suit before the competent civil Court. He must be aware that the law of limitation had started to run against him.

16. It is seen that the order of the first respondent had been passed on 11.07.2022 and the normal period of limitation to file an appeal is 60 days. The writ petition had been filed on 01.08.2022 within a period of 19 days from the date of the order of the first respondent. It has been pending till this date. This would also indicate that the petitioner still has 41 and odd days to file an appeal against the impugned order. The writ petitioner may therefore, file a regular appeal since both not only the Will has to be interpreted but also the settlement deed will have to be interpreted. Both these documents will have to be examined and it must also be kept in mind that the Registering Authorities cannot examine title. The issue of title and right to execute the document and the right to examine whether those documents are void



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or voidable can only be examined by a competent civil Court in accordance with the judgment referred above which Full Bench judgment is binding on this Court.

17. The petitioner may therefore file a appeal within a period of 41 days from the date of receipt of a copy of this order. Till such appeal is filed, let there are not be any further transactions created over the property and thereafter, if any transactions are to be further indulged in that issue would lie within the jurisdiction of the appellate authority to examine that particular aspect.

18. This Court has not examined the issue of possession. It is made clear that any issue on possession or injunction to protect possession or injunction not to disturb possession, can only be examined by a competent civil Court on the basis of documents which establish that possession with the party who so pleads possession. The writ Court can never examine that particular aspect. This issue may also be canvassed before the appellate authority by both the sides seeking



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protection of possession.

19. In view of the above reasons,

1) W.P.(MD) No.17292 of 2022 is disposed of by giving liberty to the petitioner therein to file a regular appeal before the Appellate Authority within a period of 41 days from the date of receipt of a copy of this order. Till such time, let there not be any further transactions over the property. The issue of possession can be taken up before the appellate authority by both the sides.

2) W.P.(MD) No.4867 of 2023 is dismissed, since the respondents 5 and 6 are holding OCI (Overseas citizenship of India) Cards, which are issued to the Foreigners of Indian Origin, for their entry / stay in India without obtaining a Visa.

20. It is made very clear that this Court had not examined the right of the fifth respondent in W.P.(MD)No.4867 of 2023 and the fourth respondent in W.P.(MD)No.17292 of 2022 to be settled with the property in spite of them being the citizens of United States of America.



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That issue is not examined by this Court. Similarly, the right of the father of the petitioner herein to settle the property again is not examined by this Court. Both those issues will have to be decided only by the Appellate Authority. No costs.

21. The orders passed, in W.M.P(MD) No.19488 of 2022 become otiose and no orders need be passed and accordingly, the same is closed.

22. Consequently, connected W.M.P(MD) No.12614 of 2022 is closed.

17.04.2023

Index :Yes/No
Internet :Yes/No
NCC : Yes / No

RM



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To

- 1.The District Registrar,
Dindigul District,
Dindigul.
- 2.The Sub Registrar,
Iyyampalayam Sub Registration Office,
Dindigul District - 624 204.
- 3.The District Collector
Dindigul District,
Dindigul.
- 4.The District Superintendent of Police,
The Foreigner Registration Officer,
Dindigul District,
Dindigul.



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C.V.KARTHIKEYAN, J.

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