



W.P(MD)No.6934 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6934 of 2022

and

W.M.P.(MD)No.5314 of 2022

Stable Investments and
Finance Company Ltd.,
Rep. by its Director,
Mr.Jacob Mammen
Empire Infantry,
29, Infantry Road,
Bangalore-560 001,
State of Karnataka

... Petitioner

Vs.

1.The District Registrar,
District Registrar Office,
Periyakulam,
Theni District.

2.Vijaya

3.M.R.Chinnadurai

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the 1st respondent pertaining to its Notice dated 17.03.2022 in proceedings Na.Ka.No. 478/E2/2022 and quash the same.

For Petitioner : Mr.A.R.M.Ramesh



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For Respondents : Mr.S.Ra.Ramachandran
Additional Government Pleader for R1
: Mr.M.Sreenivasan for R2
: no appearance for R3

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the first respondent and the learned counsel for the second respondent. Though the third respondent has been served and his name is printed in the cause list, he has not chosen to enter appearance.

2. The writ petitioner purchased the petition mentioned land vide sale deed dated 20.07.1994 (Document No.1472 of 1994) on the file of the SRO, Andipatti. The sale deed was executed by the third respondent. The second respondent claims that her father-in-law had half share in the said property. She filed petition dated 31.01.2022 before the first respondent for cancellation of the document standing in the name of the petitioner. The said application was taken on file and notice was ordered to the petitioner. Notice dated 17.03.2022 is challenged in this writ petition.



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3. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as pray for.

4. The second respondent has filed a detailed counter affidavit and the learned counsel took me through its contents. The learned counsel endeavored to demonstrate that the rights of the second respondent have been infringed by the execution of the petition mentioned sale deed.

5. The learned Additional Government Pleader appearing for the first respondent submitted that what has been issued to the petitioner is a mere notice and that the petitioner can very well appear before the first respondent and offer their objections. He called upon this Court not to interfere at this stage.

6. I carefully considered their rival contentions and went through the materials on record. It is true that in normal circumstances, the writ Court would be loath to interfere at the notice stage. But this is not an invariable rule. If the noticee can demonstrate that notice has been issued without jurisdiction, then, Article 226 of the Constitution of India can very well be invoked. In this case, I am not concerned with the rights of the second respondent as such. What calls for consideration is whether the first respondent could have entertained the representation from the second respondent.



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7. The District Registrar, Registration Department was given power under Circular No.67, dated 03.11.2011 to enquire into the allegation of registration of the fraudulent document. But this circular was subsequently withdrawn. Even the orders passed under the said circulars were ordered to be recalled. Recently, Section 77-A of the Act was introduced with a similar purpose. The said provision came into effect on 16.08.2022. The question as to whether the said provision is retrospective has now been referred for consideration by the Larger Bench. Earlier, the IG of Registration had issued two circulars:-

(I) Letter No.41530/U1/2017, dated 31.07.2018

(II) Letter No.41530/U1/2017, dated 21.12.2020

The said circulars empowered the registrars to conduct enquiry and render a finding if the registered document is fraudulent or not. It is obvious that such circulars cannot have retrospective application. In this case, the document was executed in favour of the petitioner way back in the year 1994. The first respondent could not have dealt with such document under the power conferred by the aforesaid circulars. The first respondent lacks jurisdiction in the matter. The impugned notice is set aside. It is for the second respondent to establish her rights before the jurisdictional civil Court, if so advised.



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8. The impugned notice is quashed. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
rmi

To

The District Registrar,
District Registrar Office,
Periyakulam,
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G.R.SWAMINATHAN, J.

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