



W.A.(MD) No.425 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2023

CORAM:

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

**W.A.(MD) No.425 of 2023
and
C.M.P(MD) No.4583 of 2023**

1.The District Registrar (Madurai South),
Madurai South Mahal Registrar South,
Madurai District.

3.The Sub Registrar,
Thirumangalam Sub Registrar Office,
Thirumangalam, Madurai District.

... Appellants

-VS-

1.R.Mariselvam
2.G.Annam
3.M.C.S.C.Ganesan
4.M.C.S.C.Murugan
5.M.C.S.C.Niranjana
6.P.Kanthasamy
7.Karuppayee
8.V.Pandiyarajan

... Respondents



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Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 20.01.2023, passed in W.P.(MD) No.1022 of 2023, on the file of this Court.

For Appellants : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.M.Prakash
Additional Government Pleader

J U D G M E N T

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

The Department is on appeal against the order of the Writ Court where the Writ Court found that the Department cannot launch upon an inquiry under Section 77-A of the Registration Act, 1908 (for brevity “the Act”), regarding the validity of the document which was executed prior to the introduction of Section 77-A of the Act. The jurisdiction to entertain complaints or cancel documents is vested with the Registrar under Section 77-A of the Act. The said Section reads as follows:-

“77-A. Cancellation of registered documents in certain cases.- (1) The Registrar, either suo moto or on a complaint received from any person, is of the opinion, that registration of a document is



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made in contravention of Section 22-A or Section 22-B, shall issue a notice to the executant and all the parties to the document and parties to subsequent documents, if any, and all other persons who, in the opinion of the Registrar, may be affected by the cancellation of the document, to show cause as to why the registration of the document shall not be cancelled. On consideration of reply, if any received therefor, the Registrar may cancel the registration of the document and cause to enter such cancellation in the relevant books and indexes.”

A reading of the above provision would show that the authorised officer, namely, the Registrar, can launch upon an inquiry only in cases where the documents are hit by or in contravention of Section 22-A or Section 22-B of the Act.

2. Section 22-A of the Act which was introduced with effect from 20.10.2016 deals with documents executed in respect of properties that are owned by the State Government or other religious institutions. It is not in dispute that Section 22-A will not apply to the facts of this case. Section 22-B of the Act reads as follows:-



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“[22-B. Refusal to register forged documents and other documents prohibited by law. - Notwithstanding anything contained in this Act, the registering officer shall refuse to register the following documents, namely:-

- 1. forged document;*
- 2. document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force;*
- 3. document relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal;*
- 4. any other document as the State Government may, by notification, specify.]”*

A reading of the above section would show that the power of cancellation is vested in the Registrar only in respect of three kinds of documents:-

- (a) a forged document;
- (b) a transaction which is prohibited by the Central Act or the State Act for the time being in force and;



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WEB COPY(c) a document relating to the transfer of immovable property by way of sale, gift deed or otherwise which is attached permanently or provisionally by the competent authorities under any Central or State Act for the time being in force or a Tribunal or any other documents which the State Government may specify.

3. A perusal of the representation dated 09.12.2022 which has been made by the petitioner shows that the eighth respondent in the writ petition, who is the second wife of the petitioner's grandfather has claimed title to the property and has sold the property as if it belongs to her. This type of document cannot fall within the definition of a “forged document” under Section 22-B of the Act. In the absence of a complaint of forgery or impersonation, the document will not be in contravention of Section 22-B so as to enable the Registrar to invoke the power under that Section. The power of the Registrar to cancel the document is dependent on a document falling within any of the clauses of Section 22-B. If the document does not fall within Section 22-B or Section 22-A, the Registrar has no power to cancel the same. Section 2(5-A) of the Act provides that the term “forged document” shall have a same meaning as assigned to it under Section 470 of IPC.



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4. Section 470 of IPC reads as follows:-

“470. Forged document.—A false [document or electronic record] made wholly or in part by forgery is designated “a forged [document or electronic record].”

4.1 'Forgery' is defined under Section 463 of IPC. Section 463 of IPC reads as follows:-

“463. Forgery.— Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

4.2 Section 464 of IPC reads as follows:-

“464. Making a false document.— A person is said to make a



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First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature], with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed;” (emphasis supplied)

A reading of the above provisions would clearly manifest that in order to constitute forgery, a person should have either impersonated another or should have signed as another. In the absence of such an allegation, there is no question



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of the document being termed as a 'forged document' or a 'false document'. In order to bring the document within the sweep of Section 22-B of the Act, the complainant must aver that the respondent or the person accused of creating a false document has either impersonated somebody or has signed as a person having authority. Unless such allegation was made, the Registrar will not have jurisdiction to entertain the complaint and launch upon an inquiry. If a person claims a right to the property under some colour of title and deals with the property, the remedy of a person who claims a counter-title is not under Section 77-A but under common law before the Civil Court. Though, the power to inquire is vested in the Registrar, Section 77-A does not vest the power to record evidence in the Register.

5. At this juncture, it will be useful to refer to the judgment of the Hon'ble Supreme Court of India in *Mohammed Ibrahim and Others v. State of Bihar and Another*, reported in (2009) 3 SCC (Cri) 929, the Apex Court had considered a similar situation where a person who had executed a sale deed in favour of another claiming that the property belonged to himself was accused of having convicted for the offences under Sections 457 and 451 of the Indian Penal Code.



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After exhaustively analyzing the provisions of the Code and various precedents, the Hon'ble Supreme Court concluded as follows:-

“16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.



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17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

6. From the representation that has been lodged before the Registrar on 09.12.2022, we find that the accused person has made a false claim that the property belongs to her and had sold the property to the second respondent in the year 2009. There is no allegation of forgery or creation of false document in the petition that is presented before the Registrar. So in our considered opinion, the ingredients for invocation of Section 77-A of the Act are absent and the Writ Court was rightly held that if the petitioner felt that his civil rights have been infringed by the execution and the registration of the said document, it is always open to the petitioner to move the jurisdictional civil Court for protecting his



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rights. Therefore, in our opinion, the essential ingredients which would empower the Registrar to launch upon an inquiry are absent in the representation made by the petitioner, therefore, the writ appeal fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.]

[L.V.G., J.]

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NCC : Yes
Index : Yes
Internet : Yes
PKN

To:

- 1.The District Registrar (Madurai South),
Madurai South Mahal Registrar South,
Madurai District.
- 3.The Sub Registrar,
Thirumangalam Sub Registrar Office,
Thirumangalam, Madurai District.



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