



W.P(MD)No.6947 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P(MD)No.6947 of 2019
and
W.M.P.(MD)No.5538 of 2019**

1.E.Geetha Helan Alexandria

2.P.Mohanakumari

3.K.P.Elango

4.S.Anbalaagan

5.T.Nagalakshmi

... Petitioners

Vs.

1.The Joint Sub Registrar No.II,
Dindigul Sub-Registrar Office, Dindigul.

2.P.K.Sekar

3.Prema

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the first respondent to cancel the Deed of Agreement for Sale dated 24.07.2013 in Doc.No.4223/2013 on the file of the 1st respondent based on the representations of the petitioners dated 28.02.2019 and 13.03.2019 within a time frame fixed by this Court and , forbearing the respondents 2 & 3 from further encumbering the landed



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properties of the petitioners in Plot No.19,20,21,28 & 30 in Survey No.185/2, Chettinaickenpatti village, Dindigul District.

For Petitioners : Mr.B.Saravanan

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader for R1

: Mr.M.P.Senthil for R2 & R3

ORDER

Heard the learned counsel on either side.

2.The property in question belonged to one Kandasamy. It was allotted to him under a family partition held during the year 1966. The case of the second respondent is that he is also entitled to share in the property. Since according to him, it is an ancestral property, Kandasamy executed a Will dated 15.03.2017 bequeathing a portion of the property in favour of his son namely the second respondent herein. However, before his demise, Kandasamy plotted out the portion of the property and sold the same individually to the petitioners herein. The documents were registered on 12.10.2007. The copies of the sale deed have been enclosed as Document Nos.3 to 7 in the typed set of papers. Mutations were effected in the revenue records and the petitioners obtained individual patta.



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3.While so, the second respondent herein entered into a sale agreement dated 24.07.2013 with his wife, namely, the third respondent herein. Since this document has cast cloud on the writ petitioners' title over the plots purchased by them, they want the same to be cancelled. Invoking Circular No.67 dated 03.11.2011, the petitioners submitted a representation before the first respondent. Since it was not acted upon, the present writ petition came to be filed.

4.The learned counsel on either side reiterated their respective contentions.

5.It is beyond dispute that Circular No.67 dated 03.11.2011 has been withdrawn and an instruction has also been issued by the IG of Registration that all orders passed under Circular No.67 dated 03.11.2011 will have to be rescinded and recalled.

6.The next question that arises is whether the petitioners can fall back on Section 77-A of the Registration Act. It reads as follows:-



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“77-A.Cancellation of registered documents in certain cases.—

(1) The Registrar, either suo motto or on a complaint received from any person, is of the opinion, that registration of a document is 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.

(2)The power under sub-section (1) may also be exercised by the Inspector General of Registration.”

The amendment was introduced vide Tamil nadu Act 41 of 2022. It came into force on 16.08.2022. The Hon'ble Supreme Court in ***CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1*** held that the established Rule is that unless a contrary intention appears, a legislation presumed not to be intended to have a retrospective operation and that law passed today cannot apply to events of the past. Section 77-A has not been made retrospective.



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7.Question arose if a settlement deed executed before the coming into force of the Senior Citizens Act can be cancelled by invoking Section 23 of the said Act. A learned Judge of this Court in the decision reported in **(2018) 6 CTC 21 (K.Neelavathy v. The District Magistrate)** held that the power under Section 23 of the Act cannot be exercised in respect of a document that was executed before the Act came into force. The same approach has to be adopted here also. The petitioners cannot take advantage of circulars that were issued subsequently or statutory amendments that came into force later. It is true that the I.G of Registration issued circulars and instructions under Section 68 of the Registration Act after withdrawing circular No.67 dated 03.11.2011. Such instructions came to be issued in 2018. If Section 77-A of the Registration Act cannot be retrospective, I fail to understand as to how such circulars can be retrospective. The circulars are also prospective and will apply to documents registered after the said circulars were issued. Section 77-A of the Act will apply only in respect of documents that were registered after 16.08.2022.

8.The petitioners need not despair. They can very well take advantage of the decision of the Hon'ble Division Bench reported in **(2020) 6 CTC 697 (N.Ramayee v. Sub-Registrar)**. The Hon'ble Division Bench had held that even if there is a subsisting sale agreement, there is no bar for creating



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subsequent transfer of the immovable property. The existence of a registered sale agreement executed by the second respondent in the encumbrance register cannot bar the petitioners' right to deal with the property.

9.I hold that the document registered in the year 2013 cannot be cancelled by the authorities under the Registration Act, 1908 on the strength of the subsequently issued circulars/subsequently introduced statutory amendments. It is seen that the second respondent along with his son filed O.S 147 of 2019 on the file of Sub Court, Dindigul. The learned Sub Judge is directed to dispose of the same on merits and in accordance with law within a period of six months from the date of receipt of copy of this order. If the suit ends in favour of the second respondent, then obviously, the writ petitioners' remedy will be elsewhere. If the suit is dismissed and ends in favour of the petitioners herein, they can very well register the Judgment and decree and that would more than address their concerns.

10.With this clarification and observation and direction to the learned trial Judge, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
rmi/SKM



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NOTE: Registrar (Judicial), Madurai Bench of the Madras High Court,
is directed to mark a copy of this order to the learned Sub Judge,
Dindigul for compliance.

To

The Joint Sub Registrar No.II,
Dindigul Sub-Registrar Office,
Dindigul.



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G.R.SWAMINATHAN, J.

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