



W.P.(MD)No.19731 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 14.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.19731 of 2023

R.Vinothkumar

... Petitioner

versus

1. The District Registrar,
District Registration Office,
J.C.Building, Vadakarai,
Periyakulam, Theni District.

2. The Sub-Registrar,
Andipatti Sub-Registration Office,
Andipatti,
Theni District.

3. M.Thiruvankidasamy

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the 1st respondent to conduct the enquiry and cancel the partition deed No. 3668 of 2014 dated 07.08.2014 on the file of the 2nd respondent by considering the petitioner's representation dated 22.05.2023.



W.P.(MD)No.19731 of 2023

For Petitioner : Mr.N.Pragalathan

For R1 and R2 : Mr.P.T.Thiraviam,
Government Advocate

ORDER

The petitioner claims that the land to an extent of 5 acres 74 cents in S.No.1121/A1A, Thimmarasa Naickyanoor Village, Andipatti Taluk, Theni District, originally belonged to his grandfather by name T.K.Muthu Rangasamy Naidu vide a registered sale deed dated 21.02.1975 in Document No.345 of 1975. During his life time, he executed a settlement deed dated 05.04.2012 vide document No.5183 of 2012 in his favour, in respect of 1 acre of land. While so, the 3rd respondent and his brothers, by suppressing the settlement deed executed in favour of the petitioner, have registered the partition deed dated 07.08.2014 in document No.3668 of 2014. Therefore, he submitted a representation dated 22.05.2023 to the first respondent seeking to conduct the enquiry and cancel the partition deed No.3668 of 2014 dated 07.08.2014. Since there was no action on the said representation, the present writ petition is filed.



W.P.(MD)No.19731 of 2023

WEB COPY

2. The Hon'ble Supreme Court in ***Satya Pal Anand v. State of M.P.***, [(2016) 10 SCC 767] has held that that the power to cancel the registration is a substantive matter and in the absence of any express provision on that behalf, it is not open to assume that the Registering Officer would be competent to cancel the registration of the documents in question. Therefore, for cancellation of registered documents, the State of Tamil Nadu brought an amendment to the Registration Act, vide the Registration (Tamil Nadu Second Amendment) Act, 2021. By this amendment Act, Sections 22B, 77A, 77B, 81A and 81B were inserted in the Registration Act. Section 77A provides the power to the Registrar to cancel registered documents, if it is found to be in contravention of sections 22A and 22B.

3. Whereas, this Court in ***S.M. Hajabakruthen Vs. The Inspector General of Registration*** [W.P.(MD) Nos. 14546 of 2022 batch, dated 27.03.2023], in view of the conflicting views taken by two



different benches of this Court regarding the applicability of Section 77A, has referred various issues for consideration by a Larger Bench of this Court. The relevant portion of the reference order is extracted as follows-

“20. In view of the reasonings of the Full Bench and in view of the conflicting views of the two learned Single Judges the following issues are referred for due consideration by a Larger Bench of this Court.

i) whether the recitals in a document presented for registration, can be examined to determine that such document was fraudulently executed or registered;

ii) whether a document in which the recitals alone are questioned can be considered only as voidable which would normally necessitate the filing of the suit to set aside the particular document or whether even those documents can be cancelled by the Sub Registrar under Section 77A of the Registration Act;

iii) whether exercise of power under Section 77A must be restricted to registration of documents in contravention to Section 22-A or 22-B of Registration Act, 1908 alone?

iv) whether the exercise of such power under



Section 77A of the Registration Act can be prospective in nature or retrospective in nature?

21. To determine these issues, the Registry may place all the writ petitions before the Hon'ble Administrative Judge for constitution of a Larger Bench to examine the issues in detail.

22. Till a decision is rendered by the Larger Bench, let no further action be taken by any of the Sub Registrars, who may await further orders of the Larger Bench.”

4. By referring to the above order, this Court in ***A.Shanthi v. The District Registrar [WP.No.18814 of 2023, dated 27.06.2023]*** has reiterated that the District Registrars across Tamil Nadu shall not take any action on an application under Section 77A of the Registration Act, till the reference is answered by the Larger Bench. The relevant portion is extracted as follows:-

“4.In the light of the above order, there is no scope for considering the representation made by the petitioner at



W.P.(MD)No.19731 of 2023

WEB COPY

present and the petitioner has to necessarily await for the final orders to be passed by the Larger Bench on the issue. Hence, this writ petition is closed for the present.

5.It is brought to the notice of this Court that in spite of the above order passed by this Court, the District Registrars are entertaining the applications under Section 77A of the Registration Act and even orders are passed. It is not known as to whether this order was circulated to all the District Registrars in State of Tamil Nadu. In view of the above order, this Court once again reiterates that the District Registrars across Tamil Nadu shall not take any further action on the application submitted under Section 77A of the Registration Act, till a final decision is rendered by the Larger Bench. The Inspector General of Registration is directed to issue a Circular in this regard to all the District Registrars across the State of Tamil Nadu immediately”

5. In view of the above decisions, this writ petition is dismissed with liberty to the petitioner to approach the competent civil Court and if any civil suit is filed, the same shall be entertained by the civil Court



W.P.(MD)No.19731 of 2023

by excluding the period for which this writ petition was pending before this Court for the purpose of calculating the limitation period. The writ petitioner is also at liberty to invoke Section 77A of the Act upon the outcome of the reference made. No costs.

14.08.2023

ogy

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

To

1. The District Registrar,
District Registration Office,
J.C.Building, Vadakarai,
Periyakulam, Theni District.
2. The Sub-Registrar,
Andipatti Sub-Registration Office,
Andipatti,
Theni District.



WEB COPY



W.P.(MD)No.19731 of 2023

B.PUGALENDHI, J.

ogy

W.P.(MD)No.19731 of 2023

14.08.2023