



W.P.(MD)No.14402 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.03.2023

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.14402 of 2016
and
W.M.P.(MD).No.10665 of 2016

G.Subbaiah Konar

... Petitioner

Vs.

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai 600 028.

2.The District Registrar,
Madurai District,
Madurai.

3.The Sub Registrar,
Karungalakudi Sub-Registrar Office,
Melur Taluk,
Madurai District.

4.Chokkalingam

5.C.Vijayan

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorari to call for the records pertaining to the impugned order dated 22.07.2016 in Na.Ka.No.891/A1/2016 on the file



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of the second respondent and quash the same.

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For Petitioner :Mr.A.N.Ramanathan

For Respondents :Mr.T.Amjadkhan
Government Advocate for R1 to R3

:Mr.N.Rahamadullah for R4 & R5

ORDER

The petitioner assails an order dated 22.07.2016 of the District Registrar, Madurai, by which the registration of sale deed dated 23.01.1976 was held to be invalid.

2. The petitioner states that land measuring 1 acre 91 cents in S.F.No.6/5 of Thargakudi Sub Village, Ayyapatti Village, Melur Taluk, originally belonged absolutely to one Nallathambi Konar. The said Nallathambi Konar had a daughter called Annapooranathammal and son also called Nallathambi Konar. The original owner of the land, Nallathambi Konar, died when his children had not attained adulthood. Annapooranathammal married one Valli Konar through whom she had two daughters, namely, Vallikannu, who is the wife of the petitioner, and Gomathy and one son, Chokkalingam, who is the fourth respondent herein.



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3. The petitioner asserts that he was unaware of a settlement deed dated 06.07.1947 allegedly executed by his vendor in favour of Annapooranathammal. According to the petitioner, the above mentioned properties, which were originally owned by Nallathambi Konar, remained in the possession of the son, who is also called Nallathambi Konar. It is further stated that all the revenue records stand in the name of Nallathambi Konar. According to the petitioner, Nallathamabi Konar sold the property to the petitioner on 23.01.1976 under Document No.76 of 1976. The said transaction was effected upon payment of valuable consideration. The petitioner further states that pursuant to such purchase, the patta was also mutated in favour of the petitioner.

4. In these facts and circumstances, it is stated that the fourth and fifth respondents, who were aware of the purchase of the property by the petitioner on 23.01.1976, issued a notice dated 29.05.2013 asserting their title over the property and stating that unless possession of the property was handed over to them, a civil suit would be filed. The said notice was replied to on 11.06.2013 denying their claim. This was followed by representations



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dated 30.01.2016 and 15.02.2016. Thereafter, W.P.(MD).No.10952 of 2016 was filed by the fifth respondent herein seeking consideration of the above mentioned representations. The said writ petition was disposed of by order dated 22.06.2016 by which the respondents therein were directed to consider and dispose of the representations within three weeks. Upon receipt of such order, the second respondent conducted an enquiry and concluded that the sale deed registered on 23.01.1976 is not valid and consequently directed the Sub Registrar to make the necessary entries indicating that the registration is not valid. Hence, this writ petition.

5. Learned counsel for the petitioner invited my attention to the material documents, such as the sale deed dated 23.01.1976, the notice dated 29.05.2013, the reply dated 11.06.2013, the subsequent representations dated 30.01.2016 and 15.02.2016 and the order of the Court dated 22.06.2016. Thereafter, he invited my attention to the operative portions of the impugned order. In particular, he pointed out the observations in the impugned order to the effect that Tmt.Annapooranathammal may not have taken possession of the property, may not have paid kist and other taxes etc. He also pointed out that the



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second respondent recorded in the impugned order that he was over ruling the objection on the ground of limitation on the basis that Circular No.67 does not specify a period of limitation.

6. Thereafter, learned counsel submitted that the impugned order is unsustainable because the second respondent has effectively decided the question of title. According to learned counsel, Circular No.67 does not empower the registration authority to decide the question of title. In order to substantiate this contention, learned counsel referred to Circular No.67 and pointed out that the authority of the registering authority under such circular is limited to cases of impersonation and production of false documents. He also placed for my consideration the order of this Court in the case of *R.Pugazhenthir v. The Inspector General of Registration and others* in *W.P.No.6903 of 2018* dated 19.06.2019. He relied upon the judgment of the Hon'ble Supreme Court in the case of *Satya Pal Anand v. State of Madhya Pradesh and others* reported in (2016) 10 SCC 767. Since the impugned order was issued without jurisdiction by erroneously relying upon Circular No.67, learned counsel submitted that the impugned order is liable to be quashed.



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7. In response, learned counsel for the fourth and fifth respondents submitted that the impugned order is not without jurisdiction because the registering authority has the power to examine whether a registration was fraudulent. In particular, learned counsel referred to the findings in the impugned order that the settlement deed dated 06.07.1947 was duly registered as document No.894 of 1947. Learned counsel submitted that the said finding was recorded after calling for the records from the relevant Sub Registrar's Office. In view of the said registration, he submitted that the registration of the sale deed on 23.01.1976 is a fraudulent registration. He further submitted that the registering authority did not decide questions relating to possession, including whether the petitioner is entitled to title by way of adverse possession. Therefore, he submitted that it is always open to the petitioner to institute appropriate civil proceedings in relation to his possession or title by way of adverse possession.

8. Learned counsel for respondents 1 and 3 defended the impugned order by submitting that Circular No.67, which was in force at the relevant point of time, empowered the registering authority to examine



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whether a registration was fraudulent.

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9. Learned counsel for the fourth and fifth respondents also pointed out that the petitioner has an alternative remedy. The said contention cannot be countenanced when the petitioner asserted that the registering officer has no jurisdiction under Circular 67 to conclude that the document registered in 1976 was invalid.

10. From the rival contentions, the question that falls for consideration is whether the registering authority was empowered under Circular No.67 to conclude that the registration of the sale deed on 23.01.1976 was invalid. The obvious first stop in such enquiry is to examine Circular No.67. Circular No.67 was issued largely on the basis of Sections 82 and 83 of the Registration Act 1908.

11. Section 82 enables the registering authority to initiate action in respect of intentional false statements, the intentional submission of false documents and impersonation. Section 83 enables the registering officer to initiate a prosecution in respect of offences under the Registration Act.



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Circular No.67 prescribes a procedure to deal with complaints relating to fraudulent registrations. The operative paragraph, *inter alia*, provide as under:

In light of the above discussion, following mandatory procedure is prescribed to deal with the complaints relating to fraudulent registrations through impersonation or production of false documents and evidences.

Once the enquiry is completed following summary procedure and it is proved that the registration has taken place through impersonation and through production of false documents and statements/admissions, he shall pass orders to this effect, recording his findings and issue direction to the concerned registering officers to file FIR against the concerned persons and also to make a note in the Index-II of the document which was fraudulently registered to the effect that the “registration is annulled as per the proceedings of the District Registrar (proceeding no. to be noted) and is shall have same effect as prescribed under Section 49 of the Registration Act”.

However, these instructions will not apply to



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the cases where the complainant has admitted execution by himself due to whatever reasons. It is further emphasized that the procedure prescribed above is only to deal with fraudulent registrations done and it should in no way be construed to mean that the registering authority shall go into the issue of deciding title in case of rival claims on certain basis.

12. From the above extracts, it is evident that Circular No.67 was intended to deal with fraudulent registration through impersonation or production of false documents. The said circular expressly provided that the registering authority is not empowered to decide title in case of rival claims.

13. Circular No.67 should also be examined in light of the Registration Rules. Rule 55 provides as under:

55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but, he is bound to consider objections raised on any of the



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grounds stated below;-

(a) that the parties appearing or about to appear before him are not the persons they profess to be;

(b) that the document is forged;

(c) that the person appearing as representative, assign or agent, has no right to appear in that capacity;

(d) that the executing party is not really dead, as alleged by the party applying for registration; or

(e) that the executing party is a minor or an idiot or a lunatic.

Rule 55 expressly stipulates that a registering officer is not required to enquire into the validity of a document brought before him for registration. It further expressly states that he is not required to consider an objection on the ground that the executing party does not have the right to execute the document. Although Rule 55 deals with a pre registration enquiry, it clearly indicates that the registering officer cannot examine whether the executant of the document was empowered to execute the same. *A fortiori*, a registering officer cannot conclude that the document registered



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almost 40 years earlier is invalid.

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14. Before concluding, it should be noticed that the Registration Act has subsequently been amended by inserting Section 77-A therein. Under Section 77-A, if the registration was in contravention of Section 22-A or 22-B of the Registration Act, the registering authority has been empowered to cancel such registrations. Whether Section 77-A is retrospective or prospective is pending adjudication before a Division Bench of this Court.

15. For reasons set out above, I am of the view that the registering authority did not have the power under Circular 67 to adjudicate on the validity of the sale deed. The registering authority should have relegated the parties to the jurisdictional civil court for such adjudication. Therefore, the impugned order is liable to be and is hereby quashed. In view of the subsequent amendments to the Registration Act 1908, it is open to the aggrieved party to submit an appropriate application before the registering authority under Section 77-A of the Registration Act. In the alternative, it is also open to the aggrieved party to approach the civil court.



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16. W.P.(MD).No.14402 of 2016 is disposed of on the above terms without any order as to costs. Consequently, W.M.P.(MD).No.10665 of 2016 is closed.

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



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To
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No.100, Santhome High Road,
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SENTHILKUMAR RAMAMOORTHY, J.

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