



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-03-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WA No.109 of 2023

And

CMP No.1123 of 2023

Mr.Sarvothman

.. Appellant

-VS-

1.D.Pushpavathy

2.D.Velavan

3.D.Kabilan

4.The Sub Registrar,
Oulgaret,
Puducherry.

.. Respondents

Writ Appeal is preferred under Clause 15 of Letters Patent Act, against the order passed by this Court in WP No.17956 of 2022 dated 14.07.2022.



For Appellant : Ms.P.Bhuvaneswari for
Mr.P.Chandrasekaran

For Respondents-1 to 3 : Mr.P.V.S.Giridhar,
Senior Counsel for M/s.P.V.S.
Giridhar Associates.

For Respondent-4 : Mr.V.Vasanthakumar,
Additional Government Pleader
(Puducherry).

J U D G M E N T

[JUDGMENT OF THE COURT WAS DELIVERED

BY S.M.SUBRAMANIAM, J.]

The writ appellant is the third party in the writ proceedings instituted by the respondents 1 to 3. Leave granted by this Court to the writ appellant, to challenge the order dated 14.07.2022 passed in WP No.17956 of 2022.

2. The respondents 1 to 3 instituted writ proceedings challenging the refusal slip issued by the fourth respondent-Sub Registrar in proceedings dated 29.06.2022, refusing to register the Sale Deed presented



by the respondents 1 to 3. The order of refusal issued under Section 71 of the Registration Act, 1908, was under challenge before the Writ Court.

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3. The respondents 1 to 3 presented the Sale Deed on 27.06.2022 before the Sub Registrar, Oulgaret, Puducherry for registration.

4. On perusal of the documents and records, the Sub Registrar found that the presentant Tmt.Pushpavathi, D/o.Devanathan, Thiru D.Velavan and Thiru D.Kabilan, S/o.Devanathan. have not submitted the Original Donation Deed registered on 28.11.1936 in R.V.63 No.8 and also Encumbrance Certificate for the said property from 29.11.1936 to till date. Since the right to register the Sale Deed was not established by the presentant, the Sub Registrar refused to register the same.

5. The learned Single Judge agreed with the submission of the respondents 1 to 3 that production of certified copy of title documents would be sufficient for registration and accordingly set aside the refusal slip and directed the Registering Officer to register the Sale Deed by accepting the certified copy of the title documents, if produced.



6. Ms.P.Bhuvaneswari, learned counsel, appearing on behalf of the appellant, would submit that they are the absolute owners of the subject property. The appellant is having title deeds from the year 1927 onwards. Several litigations are pending in respect of the subject property and some other persons are also claiming right over the property.

7. In this context, the learned counsel for the writ appellant referred a portion of the findings made by the Sub Registrar in order dated 30.11.2022, which reads as under:-

"5(c) Gist of the reply M/s Selvaradjolou.

Chetty Turst:

The protest petitioner, the Selvaradjolou Chetty Turst, represented by its Chairman Thiru S. Kalyanam has replied that the subject mentioned property belongs to Tmt. Padmini Chandraseker as per the order of Hon'ble Principal District Judge, Puducherry in O.S.No.6/1968 dated 29/04/1970. Further it is informed by the said Trust that already the claim of Tmt: Puspavathy was turned down by the Settlement officer-1 and advised to approach the competent Civil Court for



WEB COPY

WA No.109 of 2



*declaration of title vide Proceedings
No.2214/DOS/STI/23(1)/2010 dt 23/02/2010.*

NOW THEREFORE, I, K.Manikandan, Sub Registrar, Sub Registrar Office, Oulgaret in compliance with the order of Hon'ble High Curt of Judicature, Madras in WP No.17956 of 2022 and to the Contempt Petition No.2551 of 2022, hereby order that for the reasons well elucidated above, refuse the registration of the Sale Deed document presented on 27.06.2022 in respect of the property under R.S.No.158/2A Cadastre No.1318 Pt., 1318 BIS Pt, 38-Saram Revenue Village by Tmt.Pushpavathi and two others and thereby the presentants are advised to approach the Competent Civil Court to decide their title."

8. Relying on the above findings, the learned counsel for the appellant would submit that the respondents 1 to 3 filed writ petition without even impleading the necessary parties. Therefore, the present writ appeal is to be allowed by setting aside the order impugned.



9. Mr.P.V.S.Giridhar, learned Senior Counsel, appearing on behalf of the respondents 1 to 3, would submit that the original title documents are not with the respondents 1 to 3. When it is impossible for the presentant of the documents to produce the original documents, the Registering Officer cannot insist upon the presentant to produce the same. Therefore, the Writ Court has rightly considered the issues and the writ appeal is to be dismissed. The writ appellant has no right over the subject property. The mere objection by the writ appellant would be insufficient to refuse registration.

7. Regarding the Circular dated 20.02.2004 produced by the learned Additional Government Pleader (Puducherry) appearing on behalf of the fourth respondent, the learned Senior Counsel Mr.P.V.S.Giridhar would submit that it is all about the procedures. Therefore, it cannot supplant the provisions of the Registration Act. That apart, the Circular relates to the power of attorney and the verification to be done by the Registering Officer. Therefore, the said Circular is inapplicable, if the Sale Deed is presented for registration.



8. In support of the said contention, Mr.P.V.S.Giridhar, learned Senior Counsel for respondents 1 to 3, would rely on the judgment of the Supreme Court in the case of **Raza Buland Sugar Co. Ltd. vs. Municipal Board [AIR 1965 SC 895]**, wherein in paragraph-27, it has been held as under:-

“27. I find it difficult to construe subsection (3) of Section 131 as partly directory and partly mandatory; that is to say, that the requirement of publication is mandatory but the requirement of the manner of publication is not mandatory but only directory. To construe the section that way would be giving two different meanings to the verb “shall” occurring in the provision which governs both publication as well as the manner of publication. “Shall” can, according to the authorities, no doubt be construed liberally and, therefore, as being mandatory or, liberally and thus being only directory depending upon the object of the provision in which it occurs, the connected provisions and other similar matters. But it seems to me on principle that when a verb used in a



provision governs two different matters it cannot be given one meaning insofar as it relates to one matter and another meaning insofar as it relates to another matter.”

9. In the case of **Raj Kumar Dey and Others vs. Tarapada Dey and Others** [1987 (4) SCC 398], wherein in paragraph-7, the Supreme Court held as under:-

'7. In this case indisputably during the period from 26-7-1978 to December 1982 there was subsisting injunction preventing the arbitrators from taking any steps. Furthermore, as noted before the award was in the custody of the court, that is to say, 28-1-1978 till the return of the award to the arbitrators on 24-11-1983, arbitrators or the parties could not have presented the award for its registration during that time. The award as we have noted before was made on 28-11-1977 and before the expiry of the four months from 28-11-1977, the award was filed in the court pursuant to the order of the court. It was argued that the order made by the court directing the arbitrators to keep the award in the



custody of the court was wrong and without jurisdiction, but no arbitrator could be compelled to disobey the order of the court and if in compliance or obedience with court of doubtful jurisdiction, he could not take back the award from the custody of the court to take any further steps for its registration then it cannot be said that he has failed to get the award registered as the law required. The aforesaid two legal maxims — the law does not compel a man to do that which he cannot possibly perform and an act of the court shall prejudice no man would, apply with full vigour in the facts of this case and if that is the position then the award as we have noted before was presented before the Sub-Registrar, Arambagh on 25-11-1983 the very next one day of getting possession of the award from the court. The Sub-Registrar pursuant to the order of the High Court on 24-6-1985 found that the award was presented within time as the period during which the judicial proceedings were pending that is to say, from 28-1-1978 to 24-11-1983 should be excluded in view of the principle laid down in Section 15 of the Limitation Act, 1963. The High Court, therefore, in our opinion, was wrong in



holding that the only period which should be excluded was from 26-7-1978 till 20-12-1982. We are unable to accept this position. 26-7-1978 was the date of the order of the learned Munsif directing maintenance of status quo and 20-12-1982 was the date when the interim injunction was vacated, but still the award was in the custody of the court and there is ample evidence as it would appear from the narration of events hereinbefore made that the arbitrators had tried to obtain the custody of the award which the court declined to give to them. The principles enunciated by this Court in Nityananda M. Joshi v. Life Insurance Corporation of India [(1969) 2 SCC 199 : AIR 1970 SC 209 : (1970) 1 SCR 396] would have no application to the facts of this case.”

10. In the case of **Satya Pal Anand vs. State of Madhya Pradesh [(2016) 10 SCC 767]**, wherein the Supreme Court, in paragraph-41, held as under:-

“41. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority.



The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the 1908 Act. In Park View Enterprises [Park View Enterprises v. State of T.N., AIR 1990 Mad 251 : 1989 SCC OnLine Mad 273] it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition.”

11. Relying on the above judgments, Mr.P.V.S.Giridhar, would submit that the writ appeal deserves to be rejected.

12. Mr.V.Vasanthakumar, learned Additional Government Pleader (Puducherry), appearing on behalf of the fourth respondent, would oppose the petitioner by stating that the Circular was issued in order to



avoid fraudulent registration of documents. The Sub Registrars are empowered to verify the correctness of the documents and the right of the presentant of the documents for registration. Whenever doubt arises, the Registering Officer is empowered to refuse registration by assigning reasons under Section 71 of the Registration Act. Therefore, there is no infirmity in respect of the order passed by the Sub Registrar. The original parent documents are live link to ascertain the right of the presentant of a document for registration. Therefore, it is relevant for the Registering Officer to verify the same. The power conferred under the Act, is to prevent fraudulent registrations.

13. In the present case, the presentant of the document has not produced the original document and Encumbrance Certificate as pointed out by the Sub Registrar.

14. Before the learned Single Judge, the said Circular was not produced. Since the writ petition was allowed at the admission stage without filing counter in the writ petition.



15. We have considered the rival submissions made between the parties to the lis on hand. The preliminary objection raised by Mr.P.V.S.Giridhar is that the appellant has no *locus standi* to file writ appeal. This Court is of the considered opinion that the writ appellant was one of the person filed an objection petition before the Authority. The objections raised by the appellant for registering the documents in respect of the subject property was considered. Thus the appellant cannot be construed as an unnecessary party. The writ appellant is also claiming right over the subject property. Therefore, right to appeal need not be denied. The appellant was not impleaded as respondent in the writ petition. Thus this Court has rightly granted leave to file writ appeal.

16. The Government of Puducherry in Memorandum No.3880/Rev-C3/2004 dated 20.02.2004 issued guidelines. The said order cannot be confined to the power of attorney alone. It is relevant to extract paragraphs-6, 6.1 and 6.2 of the said Memorandum, which read as under:-

“6. Every document presented for registration, shall be made directly to the



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WA No.109 of 2



registering Officer in person by all the executants with the witnesses and with the fee payable there for.

6.1 The incidents of fraudulent transactions/impersonation have been brought to the notice of this department. Such incidents not only affect the reputation of this department but also the security of the private properties causing mental agony, financial loss and unnecessary litigations. It is reiterated that sufficient provisions are available under sections 34 and 35 of the Registration Act under various Rules of the Pondicherry Registration Rules, to enquire whether the document was executed by the persons by whom it purpose to have been executed. The Registering Officer should satisfy himself as to the identity of the persons appearing before him and in the case of Agent/power of attorney, the right/authority of such person to appear before him should be verified To ascertain the identity of persons, at least any one of following original (not Xerox copies) evidences shall be perused and the fact of having perused such document shall also be recorded (with EPIC/Passport No.etc) by the registering officer



on the document itself.

1. *Epic Card*
2. *passport*
3. *Driving Licence*
4. *Income Tax Card(PAN/GIR)*
5. *Family Identity Card(Ration card)*
6. *Identity card issued by the Government
Offices/Departments/Corporation/Local
Bodies*
7. *Bank passbook with photo affixed therein*
8. *Student Identity Card*
9. *Arms licence*
10. *pension card*
11. *physically handicapped certificate*
12. *R.C. Book*

*(The genuine spelling mistake in the names, if
any,may be condoned).*

*6.2. In the case of power of attorney also, in
addition to the above, his right to appear as agent
shall be verified with reference to the original
Power of Attorney deed duly authenticated and,
registered. It must also be verified as to whether
the property presented for registration was also
specifically covered in the said power of attorney
deed. In the absence of original power deed with*



the agent, necessary registers (Book II and Book IV) if available in the office, where the attorney presents the document for registration, may be perused by the Registering Officer. In other cases, duly certified copies (without any forgery) may be accepted. It should also be seen whether the said power of attorney was subsequently revoked and whether it has life or not, due to the fact that if the principal is dead, the power of attorney becomes null and void. An affidavit to the above effect may be taken from the agent/attorney holder in every such case."

17. Paragraph-11 of the Government Order deals with the process of registration of documents. The Registering Authorities can refuse registration of documents on the following grounds among others as provided under the Registration Act and the Rules. Paragraph 11.6 states that "presentation of document by an improper person (Sections 32, 33, 40 and 43)" relating to procedures to be followed for registration.

18. In exercise of the powers conferred by Section 69 of the Registration Act, 1908, the Government of Puducherry published



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Pondicherry Registration Rules, 1969. The Rules 55 and 57 reads 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 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 a 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.”

“57. A registering officer should form his own opinion as to whether a party appearing before him as executant of a document is a minor,



a lunatic or and idiot. He is not expected to hold an elaborate enquiry although, if he so desires, he may examine on the point any one present in the office.”

22. As per Rule 55, the Registering Officer is bound to consider the objections raised on any one of the grounds stipulated under Rule 55(a) to (e).

23. In the present case, if any document presented, is identified as forged or impersonated or right has not been established, then the Registering Officer is empowered to conduct enquiry to find out the correctness of the document presented for registration.

24. Therefore, we are of the considered opinion that the instructions/guidelines issued by the Government of Puducherry, is not only confined to the power of attorney, but also to conduct enquiry in respect of the objections, if any filed by any other persons for registering the document in terms of Sections 34, 35 and Rule 55 of the Pondicherry Registration Rules.



25. All such procedures are contemplated in order to avoid fraudulent registration of documents. When more than one party is claiming right over the properties, then it is necessary for the Authorities to conduct an enquiry to ascertain the rights for registering the documents. It is not as if the Authority under the Registration Act, is expected to register the document blind foldedly, without conducting enquiry, in the event of receiving an objection from any person. The principles of law requires that right person present the documents and such documents are registered in accordance with law. The purpose and object of the Registration Act and the Rules, are to ensure that the property rights are recognised and registered in a proper manner by the Government, in order to protect the property right of the individuals under Article 300-A of the Constitution of India. Constructive Interpretation of the Act and the Rules, are of paramount importance in order to reach the objectives of the Act and the Rules. There are counter claims in respect of immovable properties and two set of documents are made available. The Registering Officer cannot conduct an enquiry to decide the title. In such circumstances, the parties have to approach the Competent Civil Court of Law.



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WA No.109 of 2



26. Contrarily, the presentant of a document, cannot insist the Registering Officer to register the same, since the document is presented otherwise under the provisions of the Act. When the Act and the Rules contemplate conduct of enquiry by the Registering Officer and in the present case, the Registering Officer conducted an enquiry and found that there are counter claims by other persons, he passed the order of refusal.

27. As far as the State of Tamil Nadu is concerned, amendments were brought in and Sections 22-A, 22-B, 77-A, 77-B and 55-A of the Registration Act and Rules, are inserted to protect the rights of the persons.

28. We are inclined to direct the Government of Puducherry to consider these aspects and bring necessary amendments on par with the amendments already brought in by the Government of Tamil Nadu under the Registration Act and the Registration Rules, in order to bring more clarity to



avoid fraudulent registration of documents.

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29. As far as the present case is concerned, the appellant could establish that there are counter-claims.

30. Mr.P.V.S.Giridhar, learned Senior Counsel would submit that substantial compliance would be sufficient for the purpose of registering the documents. We disagree with the arguments in view of the fact that the compliance in *stricto sensu* is required for registering the document, since it involves transfer of property right of persons.

31. It is for the parties to establish their civil rights before the Competent Civil Court of Law. The mere production of certified copy would result in misleading of the fact and such registration would unnecessarily create further rights of property to a wrong person. Therefore, we are inclined to interfere with the order impugned.

32. Accordingly, the order impugned dated 14.07.2022 passed



in WP No.17956 of 2022, is set aside and the present writ appeal stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

26-03-2024

Index : Yes/No
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Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

The Sub Registrar,
Oulgaret,
Puducherry.



WEB COPY

WA No.109 of 2



S.M.SUBRAMANIAM, J.
AND
K.RAJASEKAR, J.

Svn

WA 109 of 2023