IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **16.04.2024**

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.11897 of 2023

T.Thevarasan
Rep. by his Power of Attorney Agent
Navaneetham .. Petitioner

Versus

1.The Sub Registrar Joint – II,
South Chennai, Chennai – 600 002.

2.The District Registrar,
South Chennai. Chennai.

3.The Deputy Inspector General of Registration,
Combined Commercial Tax and Registration Department
Compound, Ground Floor, Vetenary Hospital Road,
Penpet, Nandanam, Chennai – 600 035. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records leading to the impugned order made in Na.Ka.No.9318/E2/2020 dated 29.01.2020 on the file of the second respondent and Na.Ka.No.6000/AA1/2022 dated 27.02.2023 on the file of the 3rd respondent and quash the same as illegal and arbitrary and directing the respondents to cancel the Settlement Deed dated 29.01.2016 registered as document No.379 of 2016 on the file of the first respondent in respect of land measuring 1450 sq.ft in Plot No.10, Old

Survey No. 77/2, Old T.S.No.4, T.S.No.4/26 of Saidapet Village, Mambalam Taluk, Chennai District.

For Petitioner : Mr.N.Naganathan

For Respondents : Mr.P.Anandha Kumar
Government Advocate – R1 to R3

ORDER

With the consent of both the parties, this Writ Petition is taken up for final disposal.

2. This writ petition is filed to quash the impugned orders made in Na.Ka.No.9318/E2/2020 dated 29.01.2020 on the file of the second respondent and Na.Ka.No.6000/AA1/ 2022 dated 27.02.2023 on the file of the third respondent and consequently, direct the respondents to cancel the Settlement Deed dated 29.01.2016 on the file of the first respondent.

3. The case of the petitioner is that a settlement deed was fraudulently executed in favour of one Susila in respect of the property of the petitioner. Hence, the petitioner made a representation to the second respondent to cancel the said settlement deed which was rejected by the second and third respondents on the ground that the appeal has been filed beyond the period of

limitation and the Second Appeal in S.A.No.494 of 2019 with respect to the very same property is pending before this Court. Challenging the same, the present Writ Petition has been filed.

4. The learned counsel for the petitioner vehemently contended that the the when the Second Appeal is pending before this Court, the registering authority has no power to register the settlement deed which was a result of forgery and impersonation and the same has to be cancelled.

5. Whereas, the learned Government Advocate submitted that as the petitioner has filed the appeal beyond the period of limitation, the representation filed by the petitioner has been rejected. Hence, the order of the respondents 2 and 3 needs no interference.

6. Heard both sides and perused the materials placed on record. The document is sought to be cancelled by the original authority merely on the ground that it is a result of fraudulent transaction. Once a document is registered, the registering authorities have no power to cancel the said document.

7. It is relevant to point out that in **W.P.No.29706 of 2022 [G.Rajasulochana Vs. Inspector General of Registration and others]**, I had an occasion to deal with the power of Registrar in cancelling documents. Order in the writ petition is as follows:

> *"... 3. It is relevant to note that the object of the law of registration is to provide public notice of the transaction embodied therein. The execution of documents and its validity, the right created or extinguished is governed by the substantive law namely the Transfer of Property Act, 1882. The provisions contained in the Registration Act, 1908 relates to the factum of registration alone. The Hon'ble Supreme Court in the case of State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77 has held as follows:*
>
> *"The Act only strikes at the documents and not at the transactions. The whole aim of the Act is to govern documents and not the transactions embodied therein. Thereby only the notice of the public is drawn."*
>
> *4. The practice has been developed in the recent past in Tamil Nadu to entertain the applications given by the so-called affected parties to cancel all the documents under the pretext of either forgery or fradulent transactions. The Inspector General of Registration, Government of Tamil Nadu has brought out Circular No.67 dated 03.11.20211 to deal with the fraudulent registrations through impersonation. The said circular is mainly based on the judgment of the Full Bench of the Andhra Pradesh High Court in the case of YanalaMalleshwari v. AnanthulaSayamma, reported in AIR 2007 AP 57. However, the three bench of Hon'ble Apex Court in the case of Satya Pal Anand v. State of M.P., reported in (2016) 10 SCC 767 has held that the power of the Registrar, under the Registration Act, is purely administrative and not quasi-judicial. The same is extracted hereunder:*
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> *"34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan [State of U.P. v. Raja Mohammad*

Amir Ahmad Khan, AIR 1961 SC 787]). Section 17 of the 1908 Act deals with documents which require compulsory registration. Extinguishment deed is one such document referred to in Section 17(1)(b). Section 18 of the same Act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations. Section 21 provides for description of property and maps or plans and Section 22 deals with the description of houses and land by reference to government maps and surveys. There is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. ***The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.****"*

5. *In fact, the Hon'ble Apex Court has held that and in the absence of any express power to cancel the registered document, the Registrar has no power to cancel the document. Section 68(2) of the Registration Act, 1908 relied upon by the Registration Department to substantiate the circular in this regard, when carefully seen. Section 68(2) of the Registration Act, 1908 reads as follows:*

"68. Power of Registration to superintend and control Sub Registrars.

(1) every Sub Registrar perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub Registrar is situate.

(2) Every Registrar shall have authority to issue (Whether on

complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered."

6. The above provision makes it clear that the said section confers power upon the Registrar to supervise and control all the acts of the Sub-Registar. Sub-Section 2 empowers the Registrar to issue any order consistent with the Act, which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him. Similarly, the Registrar shall also have power in respect of the rectification of any error regarding the book or the office in which any document has been registered. The above power empowering the Registar to issue any order is a power of superitendence and supervision and not a power vested to cancel the registration of the document. Therefore, relying upon Section 68(2) of the Registration Act, 1908 and issuing such circular cannot be valid in the eye of law. Unless a specific power and express provision is made in the Act empowering the Registrar to cancel the document, such powers cannot be conferred by the Inspector General of Registration by taking aid of 68(2) of the Registration Act, 1908.

*7. The Division Bench of this Court in the case of N. Ramayee v Sub-Registrar reported in (2020)6 CTC 697***,** *wherein it has held as follows:*

"21.In Satya Pal Anand v. State of M.P., 2017 (1) CTC 414 (SC): 2016 (10) SCC 767, the Honourable Apex Court has held that the role of Sub-Registrar (Registration) stands discharged, once the document is registered. Power to cancel the registration is a substantive matter."

8. The said judgment has been confirmed by the Hon'ble Supreme Court in SLP (Civil) 4844 of 2021. In view of the above dictum laid by the Hon'ble Supreme Court in the case of Satya Pal Anand v. State of M.P., reported in (2016) 10 SCC 767 and *the Division Bench of this Court in the case of N. Ramayee v Sub-Registrar reported in (2020)6 CTC 697, this Court is of the view that unless substantive provisions is made in the statute merely on the basis of circular orders, the cancellation of the registered document cannot be done by the Registrar merely on the complaints alleging fraudulent transactions etc.,*

9. It is also brought to the notice of this Court that the Circular No.67 dated 03.11.2011 was withdrawn by issuing another circular dated 20.10.2017 in Letter No.41530/U1/2017. Thereafter, another circular dated 08.11.2017 was issued by the Inspector General of Registration, Chennai to cancel the fraudulent registration. In the said circular, it was made clear that the District Registrar cannot decide the title. The said circular also says that summary procedure to be followed while conducting enquiry and pass an order.

10. Subsequently, on 09.04.2018, 31.07.2018 and 09.11.2018, circulars were issued empowering the Registrar to conduct an enquiry and make an entry in Book I, if the document was found to be fraudulent.

11. It is relevant to note these circulars are mostly issued under Section 68(2) of the Registration Act, 1908. As alredy held that the powers conferred under Registration Act in Section 68(2) is only superentindence and control over the subordinates. Having such superentindence control, circular could not have been issued to hold an enquiry particularly in respect of alleged fraudulent transactions. It is easy for anyone to allege the transaction is a fraudulent transaction. But fraud has to be proved in the manner known to law. Fraudulent transaction and fraud have to be proved in a manner known to law. Only transaction falls within the category of fraud as defined under Section 17 of the Contract Act. Such transaction could be held as result of fraud.

12. That apart various presumption of fact and law declared to be relevant under Indian Evidence Act, 1872 has to *be taken note of. Therefore, without a proper trial particularly before the Civil Court merely on the basis of some allegations of fraudulent transactions, a document cannot be annulled by the District Registrar by mere so-called summary procedure. The fraudulent transaction is never defined under the Registration Act, only forged document is defined under Section 2(5-A). The forged document shall have the same meaning assigned under 470 of IPC, 1860. There is no definition of fraudulent transaction. The word "fraudulently" is defined under IPC. A person is said to do a thing fraudulently, if he does that thing with intent to defraud but not otherwise.*

13. The fraudulent transfer is defined under Section 53 of the Transfer of Property Act, 1882, which reads as follows:

"53. Fraudulent transfer.—(1) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree -holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made."

14. The said fradulent transfer is also voidable, at the most, such transfer has to be avoided within a period of limitation. Therefore, merely on the circular orders, the Registrar of District Registrar cannot assume the jurisdiction of the Civil Court. The word "fraud" is defined under Section 17 of the Contract Act, which would read as follows:

"17. "Fraud" defined.—"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent , with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:-

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent."

15. Therefore, unless the documents fall within the ambit of fraud, such document cannot be cancelled by mere complaint before the Sub-Registrar. It is also be noted that the fraud at the most renders the transaction voidable not void. Any such document result of fraud must be challenged within a period of Limiation Act. Now, the practice has been followed to annul the document, several documents registered 20, 30 years back were sought to be annulled and cancelled alleging that it has been obtained fraudulently or that has been forged. It is relevant to note that fraud and forgery or not the one and same. The word 'forgery' is defined under Section 463 of IPC, which 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."

16. Thus, the essence of the offence of forgery is the making of a false document. As to what constitutes a false document is explained in Section 464 IPC which reads as follows:

"A person is said to make a false document or false electronicrecord:

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 theelectronic signature, with the intention of causing it to be believed that such document or part of a document, electronicrecord or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by theauthority of a person by whom or by whose authority he knows that it was not made, signed, sealed,executed or affixed; or

Secondly.—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or anelectronic record in any material part thereof, after it has been made, executed or affixed with electronic signatureeither byhimself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronicrecord or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mindor intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document *orelectronic record or the nature of the alteration."*

17. The Hon'ble Supreme Court in the case of Mohd. Ibrahim v. State of Bihar, reported in (2009) 8 SCC 751 has held as under:

"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 bona fide 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.

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."

18. Therefore, from the above dictum it makes it clear that unless the document in question comes within the category of a false document as defined in Section 464 of the IPC, there cannot be a case of forgery, and the same cannot be cancelled.

19. Similarly, the Hon'ble Supreme Court in the case of Indian Bank v. Satyam Fibres (India) (P) Ltd., reported in (1996) 5 SCC 550, while considering the doctrine of fraud on the Court, the Supreme Court has observed as under:

"30. Forgery and fraud are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts."

20. The power to make an enquiry with regard to any document is available to the Registrar under Sections 73 & 74 of the Registration Act, 1908 to find out the document is executed. Such power to conduct an enquiry and record evidence under Section 74 is available only to determine (a) whether the document has been executed; (b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, to entitle the document to registration. In other words, the Registrar can see whether the document complies with the requirements of Section 34 or if it suffers from any of the procedural infirmities in Section 19-22 or is hit by any of the grounds in Section 22-A or 22-B of the Act.

21. Similarly, the Division Bench of this Court in the case of ***Park View Enterprises v State Government of Tamil Nadu****, reported in AIR 1990 Mad 251 held that the Sub-Registrar performs only executive functions under the Act. In other words, he is not a quasi-judicial authority deciding a lis. This view has also been upheld by the Hon'ble Supreme Court in the case of Satya Pal Anand v. State of M.P., reported in (2016) 10 SCC 767. Similarly, the Hon'ble Supreme Court in the case of Horil v. Keshav, reported in (2012) 5 SCC 525, has held that the Revenue Courts are neither equipped nor competent to effectively adjudicate on allegations of fraud that have overtones of criminality and the courts really skilled and experienced to try such issues are the courts constituted under the Code of Civil Procedure.*

22. From the above discussions, this Court is of the view that merely on the basis of allegations of fraudulent transactions, the Registrars have no power to cancel any document. It is also relevant to note that Section 22-A was introduced vide T.N Amendment Act 2 of 2009 with effect from 20.10.2016 empowering the Registrar to refuse registration on certain grounds. Section 22-A reads as follows:

" 22-A. Refusal to register certain documents .— Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents, namely:—

(1) instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease,—

(i) belonging to the State Government or the local authority or Chennai Metropolitan Development Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971;

(ii) belonging to, or given or endowed for the purpose of, any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is applicable;

(iii) donated for Bhoodan Yagna and vested in the Tamil Nadu State Bhoodan Yagna Board established under section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958; or

(iv) of Wakfs which are under the superintendence of the Tamil Nadu Wakf Board established under the Wakf Act, 1995, unless a sanction in this regard issued by the competent authority as provided under the relevant Act or in the absence of any such authority, an authority so authorised by the State Government for this purpose, is produced before the registering officer;

(2) instrument relating to the transfer of ownership of lands converted as house sites without the permission for development of such land from planning authority concerned: Provided that the house sites without such permission may be registered if it is shown that the same house site has been previously registered as house site.

Explanation I.—For the purpose of this section 'local authority' means,—

(i) any Municipal Corporation constituted under any law for the time being in force; or

(ii) a Municipal Council constituted under the Tamil Nadu District Municipalities Act, 1920 ; or

(iii) a Panchayat Union Council or a Village Panchayat constituted under the Tamil Nadu Panchayats Act, 1994 ; or

(iv) any other Municipal Corporation, that may be constituted under any law for the time being in force.

Explanation II.—For the purpose of this section 'planning authority' means the authority constituted under section 11 of, and includes the Chennai Metropolitan Development Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971;

(3) instrument relating to cancellation of sale deeds without the consent of the person claiming under the said sale deed."

23. On careful perusal of the above section makes it clear that the scope of enquiry of the Registrar while making registration is limited. The Sub-Registrar must have some material to show that the lands belonged to the temple or wakf or Government or there was no permission for development of such land from planning authorities and the land has been coverted as house site. If there is a serious dispute on the title to the land, such questions cannot be decided by the Registrar at the stage of registering a document since he is only conducting a limited summary enquiry.

24. The Division Bench of this Court in the case of Sudha Ravi Kumar v. Special Commissioner & Commissioner, Hindu Religious and Charitable Endowments Department, reported in 2017 (3) CTC 135 (DB) has held as follows:

"7. A perusal of Section 22-A of the Act would make it crystal clear that it is Mandatory on the part of the Registering Authority to refuse to register any document of sale, transfer, gift, Mortgage, exchange or lease in respect of any property belonging to or given or endowed for the purpose of any Religious Institution governed by TN HR & CE Act. But at the same time, in order to satisfy himself that the property belongs to or given or endowed for the purpose of any Religious Institution, he should have some material before him which can be obtained by holding a Summary Enquiry."

25. Similarly, the Division Bench of this Court in W.A.Nos.260 & 261 of 2023 by order dated in 07.06.2023 in the case of P. Jagannathan v Inspector General of Registration has held that the power to cancel a document for violation of Section 22-A can be resorted to only if the title of the temple is admitted. In other words, where the title of the temple is disputed parties must necessarily be relegated to the civil court, and the Sub-Registrar cannot refuse to register the document on that ground since the rights of parties will have to be decided only by the civil court.

26. Further, the State of Tamil Nadu introduced the Registration (T.N Second Amendment) Act (Act 41 of 2022) with effect from 16.08.2022. The Act introduced Section 22-B into the Registration Act and reads as follows:

*"**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."

27. Whether the power under Section 77-A would apply to the documents registered before its introduction ie., from 16.08.2022 has been dealt with by a Division Bench of this Court in ***Netvantage Technologies Pvt. Ltd v Inspector General of Registration****, reported in 2024 SCC OnLine Mad 567, wherein it is held as follows:*

"In respect of other documents registered prior to the amendment, one has to understand that those documents are to be dealt in accordance with the law prevailing at the time of registration by approaching the Civil Court of law. When all those documents registered prior to the amendment of the year 2022 are subjected to Section 77-A of the Act, then this Court is afraid that an anomalous situation would be created by approaching the District Registrar for the purpose of adjudication of disputed issues with reference to those documents registered several years back. The amendment effected from 16.08.2022 has not intended to do so nor the provision expressly provides any such retrospective application. Prior to amendment, Section 22-A and Section 22-B was not in force. Thus, Section 77-A cannot have retrospective effect. In other words, Section 77-A must be read in conjunction with Section 22-A and Section 22-B of the Act. Insertion of all these three Sections are to be understood holistically to avoid any inorderliness."

28. In view of the above judgment of the Division Bench of this Court, Section 77-A cannot be applied retrospectively and can be applied only after the same is brought as a statute.

29. Therefore, this Court is of the view that unless the forgery is conclusively established merely on the basis of allegations of forgery, as a matter of right, a document cannot be cancelled. The forgery and fraud are essentially a matter of evidence which shall be proved as per law. Therefore, unless *there is a strong evidence of impersonation or forgery, i.e., a creation of false record as defined under the Indian Penal Code, merely on the basis of allegations such documents cannot be cancelled. Section 22-B relates to forged instrument not a fraudulent transaction."*

8. In view of the above settled position of law, unless the power is specifically vested with the registering authority to cancel any document and to go into the matter, there cannot be any direction to cancel the document. The remedy of the writ petitioner is to file a suit to establish her right in a Civil Court. The order of this Court in this writ petition will not stand in the way of Civil Court to decide the matter on its own merits.

9. Accordingly, this Writ Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

16.04.2024

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Index :Yes/No
Internet :Yes/No
Neutral Citation : Yes/No

To,

1.The Sub Registrar Joint – II,
South Chennai, Chennai – 600 002.

2.The District Registrar,
South Chennai. Chennai.

3.The Deputy Inspector General of Registration,
Combined Commercial Tax and Registration Department
Compound, Ground Floor, Vetenary Hospital Road,
Penpet, Nandanam, Chennai – 600 035.

N. SATHISH KUMAR, J.

vrc

W.P.No.11897 of 2023

16.04.2024