



W.P.No.11654 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.11654 of 2019

R.Muniyandi @ Chandran

... Petitioner

VS.

1.The Inspector General of Registration,
Santhome,
Chennai – 600 028.

2.The District Registrar of Registration Chennai (North),
Administration, 1st Floor,
Kuralagam,
Chennai.

3.The Sub Registrar,
Madhavaram SRO,
Madhavaram.

4.Tmt.Gunabushanam
5.Sathiyavathi
6.Dhanamani
7.Manoranjitham
8.Annakili

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9.V.Vijay
10.K.Govindaraj

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... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 and 3 to delete the S.No.612 (T.S.No.50/1, 50/2, Block C1) from Encumbrance Certificate, Deeds registered as Document Nos.7263, 7264 and 7265 of 2014 dated 12.12.2014 as per the circular letter No.41530/U1/2017 dated 31.07.2018 along with order dated 19.02.2019 by the 2nd respondent No.12313/A5/2018.

For Petitioner : Mr.S.P.Sudalaiyandi

For Respondents : Mr.T.Chezhiyan
Additional Government Pleader
for R1 to R3
Mr.E.Prabu for R4 to R10

ORDER

The petitioner herein seeks a direction to the respondents 2 and 3 to delete S.No.612 (T.S.No.50/1, 50/2, Block C1) from Encumbrance Certificates relevant Document Nos.7263, 7264 and 7265 of 2014 dated 12.12.2014 as per the circular letter No.41530/U1/2017 dated 31.07.2018.



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2. It is the case of the petitioner that the property in S.No.612 situated in Madhavaram Taluk and Village, Tiruvallur District with an extent of 53 cents was purchased by the petitioner's mother Lakshmiammal under sale deed dated 31.03.2010. Later on she settled the said property in favour of the petitioner on 17.10.2013. The patta for the above mentioned property also stands in the name of the petitioner.

3. The 5th respondent/Sathiyavathi executed a release deed in favour of 4th respondent/Gunabushanam, whereunder while describing the subject matter of the release deed survey number of the petitioner's property in S.No.612 was included, as if the same was equivalent to S.No.604/2. It is the case of the petitioner that the act of 5th respondent in executing a release deed in favour of 5th respondent by including survey number of the petitioner in the documents would amount to creation of the fraudulent document and hence the respondents 2 and 3 should be directed to remove the entry in the encumbrance certificate pertains to the release deed executed by the 5th respondent.



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4. Removing the entry in the encumbrance certificate pertains

to the release deed executed by the 5th respondent would amount to cancelling the registered document executed by the 5th respondent in favour of Gunabushanam. A Division Bench of this Court in ***M.Kathirvel vs. The Inspector General of Registration*** (W.P.No.10291 of 2022 etc., batch, dated 02.08.2024) struck down Section 77-A of the Registration Act empowering the registering authority to cancel the document on the ground of fraud. As on date, there is no enabling provision empowering the registering authority namely the respondents 2 and 3 to cancel the registered document. If the authorities are not empowered to cancel the document it would not be appropriate to direct cancellation of the entry in the encumbrance certificate relating to registered document. Therefore, this Court is not inclined to grant the prayer of the petitioner.

5. The learned counsel for the petitioner relying on the circular of the first respondent dated 31.07.2018 submitted that the official respondents may be directed to make an entry in the register regarding the



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fraudulent nature of the document. When the Division Bench of this Court held that the authorities are not entitled to enquire into the question of fraud relating to registration of document and struck down the enabling provision, the circular issued by the first respondent empowering registering authority to make an entry in the register regarding the fraudulent nature of the document would also automatically go. It is pertinent to refer to the observations of the Division Bench in the above mentioned case which reads as follows:

178. Section 68(2) of Registration Act was interpreted to confer power on the District Registrar to cancel the document for irregularities in registration. As this Court has already held that Section 77-A of the Act is unconstitutional as it is contrary to the object of the Act, any circular or order or direction enabling the District Registrar or Registering Officer to cancel registration or invalidating any transaction is unconstitutional and hence, the impugned circular dated 08.11.2017 is declared as unconstitutional. The writ petition stands allowed.



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6. In view of the categorical pronouncement of the law by the Division Bench of this Court in the above mentioned case law, the request made by the petitioner cannot be accepted and accordingly, this writ petition stands dismissed.

7. It is always open to the petitioner to move the Civil Court to establish that the documents executed by the 5th respondent in favour of 4th respondent would not bind the petitioner. While computing the limitation for filing suit before the Civil Court, the petitioner is entitled to exclude the time taken by him in prosecuting the writ petition before this Court [i.e., from 12.04.2019 to the date of receipt of a copy of this order].

8. Accordingly, this writ petition is dismissed. No costs.

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

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S.SOUNTHAR, J.

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