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WP.No.14938 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.14938 of 2024
and W.M.P.No.16212 of 2024

1.A.Devanbu

2.E.Sathyadoss

.. Petitioners

Versus

1.The Inspector General of Registration,
Office of the Inspector General Registration,
Santhome High Road, Chennai – 6000002.

2.The District Registrar,
Chennai South Administration.

3.Clement Elango

4.P.Durai

5.P.Thirumalai

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 1st respondent in 33560/U1/2023 dated 29.02.2024 confirming the order passed by the 2nd respondent in Na.Ka.No.2949/C2/2023 dated 04.07.2023 issuing order to cancel the Release deed bearing Document number 6753 of 2002 dated 11.12.2002 and release deed bearing document number 6805 of 2002 dated 12.12.2002 and quash the same as illegal.

<https://www.mhc.tn.gov.in/judis> For Petitioner : Mr.Adinarayana Rao



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For Respondents : Mr.P.Anandha Kumar for R1 and R2

Government Advocate

Mr.Ashok Menon for R3

No appearance for R4 and R5

ORDER

This writ petition is filed to call for the records pertaining to the proceedings of the 1st respondent in 33560/U1/2023 dated 29.02.2024 confirming the order passed by the 2nd respondent in Na.Ka.No.2949/C2/2023 dated 04.07.2023 issuing order to cancel the Release deed bearing Document number 6753 of 2002 dated 11.12.2002 and release deed bearing document number 6805 of 2002 dated 12.12.2002 and quash the same as illegal.

2. The case of the petitioner is that the subject property situated in Survey No.148/5A in Selaiyur Village was part of a larger extent of 96 cents owned by one Kullan. After the demise of Kullan, the property devolved upon his two sons viz Kanni and Chinna Kannu. There was a partition among two children viz Kanni and Ponnusamy and Arumugam, sons of Late Chinnakannu by a Koorchit dated 07.07.1953 and partitioned as 48 cents to each. Thereafter, certain documents has been executed and once again, release deed vide Doc.No.1925/1972 was executed on 05.06.1972. Further case of the defendant that there was a comprise decree was filed in O.S.No.137 of 2002 among Arumugam and Ponnuswamy and the remaining share of 36 cents which has been divided between them based on the compromise decree in



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O.S.No.137 of 2002 on the file of Sub Court, Chengalpattu vide order dated 11.12.2003. However, suppressing the above fact, release deed has been executed and subsequently, settlement deed also executed. Hence, according to the petitioners, all the documents are fraudulent documents. Hence, he seeks a direction to cancel the same. The impugned order proceeding on the basis of the said complaint and all the document has been cancelled. The impugned order proceeds as if the title dispute.

3. Learned counsel for the petitioner would submit that the respondents 4 and 5 have filed a suit in O.S.No.228 of 2005 against the 1st petitioner to cancel the release deeds. Similarly the 3rd respondent filed other suit in O.S.No.103 of 2014 to grant an order of interim injunction. The petitioner has already filed the suit in O.S.No.148 of 2017 for declaration that he is the absolute owner of the property. All the suits are pending before the competent authority. Pending above suits, the documents has been given cancelled by the 1st respondent confirming the order of the 2nd respondent in Na.Ka.No.2949/C2/2023 dated 04.07.2023 is illegal and the said impugned order is liable to be quashed. Hence, the present petition.

4. Learned counsel for the respondents would submit that the impugned order was passed based on the available documents. According to him, the impugned order shall be kept in abeyance till the suits are decided.



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5. This Court gave its anxious consideration to the learned counsel appeared on either side and perused the materials available on record.

6. The impugned order proceeds as if the registering authorities assumed the role of the Civil Court jurisdiction go into all the issues. The complaint is not based on the forgery of instrument, whereas, complaint has been entertained under Section 77(A) of the Registration Act and decided as if the title dispute. Particularly, when the same issue already been seized of by the Civil Court and pending from the year 2019, Section 77(A) of the Registration Act enable the registering authority to cancel the forged instrument alone and it is not relating to any other fraudulent document etc., Such being the position, the Revenue Authorities entertaining the complaint and deciding the rights of the parties as a Civil Court cannot be sustained in the eye of law.

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



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“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 fraudulent transactions. The Inspector General of Registration, Government of Tamil Nadu has brought out Circular No.67 dated 03.11.2021 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 Yanala Malleshwari v. Ananthula Sayamma, 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:

*“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***



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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-Registrar. 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 Registrar to issue any order is a power of



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superintendence 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.

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. Therefore, the impugned order passed by the 1st respondent confirming the order of the 2nd respondent is liable to be quashed. Let the parties agitate their rights in the Civil Suit.

9. In the result, this Writ Petition is allowed and the impugned order of the first respondent made in 33560/U1/2023 dated 29.02.2024 is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.07.2024

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Index : Yes/No

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- To,
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Office of the Inspector General Registration,
Santhome High Road, Chennai – 6000002.
 - 2.The District Registrar,
Chennai South Administration.



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N. SATHISH KUMAR, J.

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