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WP.No.14885 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.14885 of 2024 &

WMP.Nos.16272 & 16274 of 2024

M.Nirmal @ Nirmal Kumar

.. Petitioner

Versus

1. The Inspector General of Registration and Stamps,
No.100, Santhome High Road, Chennai – 600 028.
2. The District Registrar, Fort Campus,
Vellore Fort, Vellore – 632 002.
3. The Deputy Registrar,
Deputy Registrar office Campus, Vellore – 1.
4. The Sub Registrar, O/o.Sub Registrar,
Thirupathur, Thirupathur District.
5. Senthil Murugan

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent vide his proceedings in proceedings No.244/E3/2022 dated 18.04.2022 quash the same as illegal and direct the 4th respondent to remove the document remarks in the encumbrance certificate in the Document No. 10360 of 2008.



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For Petitioner : Ms.Kanimozhi Sundar

For Respondents : Mr.Stalin Abhimanyu
Additional Government Pleader – R1 to R4

No appearance – R5

ORDER

Since no adverse Order has been passed against the fifth respondent, notice to him is dispensed with. With the consent of both sides, this Writ Petition is taken up for final disposal at the admission stage itself.

2. This Writ Petition is filed to quash the impugned proceedings of the second respondent in proceedings No.244/E3/2022 dated 18.04.2022 as illegal and direct the fourth respondent to remove the document remarks in the encumbrance certificate in the Document No.S10360 of 2008.

3. The case of the petitioner is that the mother of the petitioner purchased the subject property to an extent of 3600 sq.ft. When the petitioner and his mother approached the Revenue Department for issuance of patta, the fifth respondent claimed right over the subject property with some forged documents. The Sub Collector, by an Order dated 31.05.2019 directed the



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parties to approach the Civil Court to decide the title of the property.

Thereafter, the fifth respondent filed a suit in O.S.No.180 of 2019 before the Sub Court, Thirupattur in which the petitioner filed a counter claim against the fifth respondent. The fifth respondent had withdrawn the suit filed by him and the counter claim filed by the petitioner in the suit is still pending. The fifth respondent misrepresenting the fact of withdrawal of the suit, got the Order from the District Revenue Officer in his favour. The second respondent has no power to cancel the settlement deed executed in favour of the petitioner. Hence, challenging the impugned Order, the present Writ Petition has been filed.

4. Counter has been filed by the fourth respondent to the effect that according to the transaction history of the acquired property of the petitioner and the fifth respondent, the petitioner's mother has incorporated R.S.No.94/13B2 in the settlement in favour of the petitioner and the same belonged to the fifth respondent and the petitioner's family had encroached the fifth respondent's property. Hence, the said document has been decided as fraudulent registration. It is their further contention that registration of the document has not been cancelled and the Sub Registrar is directed not to entertain registration based on the tainted documents. According to the fourth respondent, instead of filing an appeal as against the impugned Order, the



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petitioner has filed the present Writ Petition. Hence, prayed for dismissal of this Writ Petition.

5. The learned counsel appearing for the petitioner submitted that the very impuged Order proceeded as if it is a Civil Court and decided the title of the parties. It is his contention that there is no forgery, whatsoever and whether the document is a forged document or not has to be established before the Civil Court and without any evidence and merely based on the statements of the third and fourth respondents, the impugned Order came to be passed. Hence, according to him the impugned Order has to be quashed.

6. The learned Additional Government Pleader submitted that based on the revenue records, the impugned Order has been passed. Instead of pursuing the appeal remedy available to the petitioner, this Writ Petition has been filed.

7. I have perused entire materials. Complaint has been given by the fifth respondent alleging that the petitioner acquired the property by way of a settlement deed dated 16.06.1984 from his mother to an extent of 3600 sq.ft. by clubbing erroneously the R.S.No.94/13B2 along with R.S.93/8 in Pachal Village and encroached the property acquired by the fifth respondent from one



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P.R.Perumal of an extent of 3186 sq.ft. in R.S.No.94/13B2 of the same village.

Whereas, the writ petitioner is in possession of the property in R.S.No.93/8 and had dealt with excess extent of property belonging to the fifth respondent. According to him, it is a clear case of fraud. Based on the same, the document has been cancelled. A perusal of the records indicate that the fifth respondent set up his title only in respect of R.S. No.94/13B2. Whereas the settlement deed executed in favour of the petitioner relate to R.S.No.93/8. Therefore, when there is difference in survey number, whether the petitioner actually owned certain extent of land in survey No.93/8 and 94/13B2 as per the revenue records is a matter of evidence. It has to be established in a Civil Court. Without there being any evidence, merely on the basis of the complaint, the document cannot be cancelled as a fraudulent document. The fact of fraud and forgery has to be pleaded and proved in the manner known to law. It is also relevant to note that, the impugned Order has been passed without affording any opportunity to the petitioner. Therefore, this Court is of the view that the registering authorities cannot assume the role of a Civil Court and cancel the document. This aspect has been elaborately dealt by this Court in **W.P.No.29706 of 2022 [G.Rajasulochana Vs. Inspector General of Registration and others]**. Hence, the impugned Order cannot be sustained in the eye of law.



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8. Accordingly, this Writ Petition is allowed and the impugned proceedings of the second respondent dated 18.04.2022 is quashed and the fourth respondent is directed to remove the document remarks in the encumbrance certificate in the Document No.10360 of 2008. No costs. Consequently, connected miscellaneous petitions are closed.

15.07.2024

vrc

Index :Yes/No

Internet :Yes/No

Neutral Citation : Yes/No

To,

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No.100, Santhome High Road, Chennai – 600 028.
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N. SATHISH KUMAR, J.

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