



W.P.No.14645 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.14645 of 2024

and

W.M.P.No.15908 of 2024

S.S.Gayathri Bai

...

Petitioner

Vs

1.The District Registrar,
Registrar Office, Collectorate,
Krishnagiri-635 115.

2.Krishnappa

3.Chenna Veerachari

4.V.Ramappa

...

Respondents

PRAYER: This writ petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in the proceedings in Na.Ka.No.0425/U/2020, dated 14.02.2024 and quash the same as illegal, incompetent and without jurisdiction and to further direct the 1st respondent to annul the sale deeds registered as Doc.No.2037/2006 and Doc.No.8471/2006 dated 17.02.2006 and 17.07.2006.

For Petitioner : Ms.V.Srimathi

For Respondent : Mr.T.Chezhiyan
No.1 Additional Government Pleader

Respondent
Nos.2 to 4 : Notice sent, service awaited.



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ORDER

The petitioner herein challenges the order passed by the 1st respondent refusing to cancel the Doc.No.2037 of 2006 and Doc.No.8471 of 2006 registered on the file of the Sub Registrar, Hosur, under Section 77A of the Registration Act.

2.It is the main case of the petitioner that the above mentioned documents were registered by playing fraud. The petitioner filed an application before the 1st respondent for cancellation of the above mentioned documents on the ground that the documents were forged one. The 1st respondent, by order dated 14.02.2024, dismissed the application filed by the petitioner. Aggrieved by the same, the petitioner has filed this Writ Petition before this Court.

3.In the case of *M.Kathirvel vs. The Inspector General of Registration (W.P.No.10291 of 2022 etc., batch, dated 02.08.2024)*, the Division Bench of this Court has struck down Section 77A of the



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Registration Act, 1908 and therefore, there is no enabling provision as on today, empowering the 1st respondent to entertain the application for cancellation of registered document on the ground of fraud.

4.The learned counsel for the petitioner mainly contended that the sale deeds dated 17.02.2006 and 17.07.2006 were not mainly challenged under Section 77A of the Registration Act and the sale deeds were challenged on the ground of Forgery. The learned counsel for the petitioner by taking this Court to Rule 55 of Registration Rules submits that Sub Registrar has got jurisdiction to decide a question of forgery, if it is raised before him. The learned counsel for the petitioner also by relying on the order passed by this Court in an earlier writ petition filed by the petitioner's husband in W.P.No.49818/2006 submitted that in spite of directions issued by this Court to conduct enquiry on the plea of forgery raised by the petitioner, the respondent has not considered the same properly. The learned counsel for the petitioner further submitted that the private respondents committed impersonation and created documents in the name of the petitioner's husband Siva Shankar Rao and the same can be gathered



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from the striking difference found in the signature of the petitioner's husband in document dated 17.02.2006 and his signature found in parent document.

5. Rule 55 of The Registration Rules reads as follows:

“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;



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***(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.”***

6.A perusal of the Registration Rules would indicate Rule, 54 to Rule 59 are grouped together under the caption “ENQUIRY BEFORE REGISTRATION”. Rule 55 has to be read along with Section 35 of The Registration Act, 1908, which reads as follows:

***“35. Procedure on admission and denial of execution
respectively.—***

***(1) (a) If all the persons executing the document
appear personally before the registering officer and are
personally known to him, or if he be otherwise satisfied that
they are the persons they represent themselves to be, and if
they all admit the execution of the document, or***

***(b) if in the case of any person appearing by, a
representative, assign or agent, such representative, assign
or agent admits the execution, or***



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(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61 inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the persons so denying, appearing or dead:

Provided that, where such officer is a Registrar, he shall



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follow the procedure prescribed in Part XII:

1[Provided further that the State Government may by notification in the Official Gazette, declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purpose of this sub-section and of Part XII.]

7.The enquiry contemplated under Rules 54 to 59 are relating to the period before registration of the document. The same can be gathered from the fact that Rules 54 to 59 are grouped under the Heading “ ENQUIRY BEFORE REGISTRATION”. Therefore, if allegation of impersonation or forgery is raised before registering authority prior to registration of the document, he can enquire into the said factual questions like impersonation and forgery. However, after registration of document by the registering authority, he cannot conduct enquiry with regard to the forgery and impersonation before registration and cancel the document registered by him in the absence of specific statutory power. In order to confer such statutory power, Section 77A of Registration Act was included by



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empowering the registering authority to cancel the registered documents on the ground of fraud. However, the Division Bench of this Court struck down Section 77A of the Registration Act which empowered the registering authority to cancel the document on the ground of fraud in ***M.Kathirvel Vs. The Inspector General of Registration (W.P.No.10291 of 2022 etc., batch, dated 02.08.2024).***

8. Therefore, as on today, there is no enabling provision empowering the registering authority to cancel the registered document. In such circumstances, the first respondent cannot entertain an application for cancellation of the registered document on the ground of fraud.

9. In this regard, it would be appropriate to refer to the observation of the Division Bench in ***M.Kathirvel Vs. The Inspector General of Registration (W.P.No.10291 of 2022 etc., batch, dated 02.08.2024)*** with regard to the pending representations before the registering authority seeking cancellation of the registration of the document under Section 77A of the Registration Act, which reads as follows:



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“ 175.The above writ petitions have been filed with a prayer for cancellation of documents or for cancelling registration of documents which are long before the amendment came. In view of the decision this Court had taken that Section 77-A as introduced by the amendment is unconstitutional, all the above writ petitions are dismissed as there is no scope for enquiry now under Section 77-A of the Act.”

10. Therefore, in the absence of Section 77A of Registration Act, official respondents are not having any power to cancel the registered document by conducting an enquiry with regard to the alleged fraud or impersonation. Rule 55 relied on by the learned counsel for the petitioner will enable the authorities to decide the question of impersonation or fraud, had it been raised prior to registration of the document. However, after registration of the document, the registering authorities cannot consider the question of fraud or impersonation in the absence of specific enabling provisions.

11. The learned counsel further submitted that relying on circular by



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I.G of registration dated 31.07.2018, this Court in the writ petition filed by the petitioner's husband directed the respondents to conduct enquiry in the light of the circular dated 31.07.2018 and pass appropriate orders on merits. Therefore, the official respondents are entitled to consider the question of fraud. The circular relied on by the petitioner before this Court in earlier writ petition in W.P.No.49818 of 2006 reads as follows;

“ 6. Hence, all the District Registrars are hereby directed to do the following:-

a) If fraudulent registration is proved, apart from directing the Registering Officers to file police complaints against the fraudsters, specific orders to be passed directing the Registering Officers for making entry in the relevant indexes and also in the copies of documents. The entry in index (ii) shall be made as " The registration of document is found as fraudulent vide proceedings of the District Registrar (proceeding No. and dated to be noted) due to -----(the findings to be given briefly). The same note has to be made as a foot note in the relevant copies of the documents filed and to be signed by the Registering Officer. If it is scanned document, then, the note has to be made in a separate white paper, signed by the Registering Officer and



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to be linked to the main document.

b) District Registrars in his/her proceeding should direct the Registering Officers that no registration of documents should be done based on the fraudulent document as declared by the District Registrar. But, the genuine owner of the property in question should be allowed to proceed with further registration irrespective of the occurrence of the fraudulent registration with respect to the said property.

c) District Registrars should add the following sentence in every order to be passed by them under circular issued vide reference third cited:-

“ If the concerned party/ies, wishes, he/they can appeal to the Inspector General of Registration, 100, Santhome High Road, Chennai – 28, against this order within 60 days from the date of receipt of this order.”

d) For the cases, in which, orders have been passed already, a separate letter shall be sent with a message that "if they are aggrieved by the order, they can file an appeal to Inspector General of Registration within 60 days from



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the date of receipt of this letter”.

12. Therefore, the circular relied on by the petitioner's husband before this Court directs the District Registrar to file police complaint against the fraudsters and make entry in the relevant index regarding the fraudulent nature of the document and directs registering authorities not to register further documents. In effect, the circular empowers the registering authorities to nullify the operation of the document. In fact, the Division Bench of this Court in the above mentioned cases also considered the validity of the circulars issued by the IG of registration and held that the circulars issued by the IG registration can only supplement the provisions of the Act and it cannot override the provisions of the Act. This Court also held that in view of the order striking down Section 77A of the Act, any circular or other directions issued by the IG of registration enabling the District Registrar or registering officer to cancel the registration or invalidate any transaction is also unconstitutional. The relevant observation of the Division Bench reads as follows:

“170.. Similarly, the contention of the



petitioner, relying upon the Circular issued by the Inspector General of Registration, was also rejected on the ground that the Circular can only be supplementary to the provisions of the Act and cannot override the provisions of the Act.

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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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13.The submission made by the learned counsel for the petitioner was based on the circular issued by I.G. of Registration enabling the registering authority /District Registrar to nullify the registered document by making relevant entry in the index and in the copies of the documents. However, after striking down substantial provision (Section 77-A of Registration Act) which enabled the registering authorities to cancel the document on the ground of fraud, the Division Bench as a necessary corollary held, any circular or order issued by I.G. of Registration to empower the registering authority to cancel the registration or invalidate any transaction is also unconstitutional. Therefore, the circular relied on by the petitioner will not help the petitioner to assail the order passed by the official respondent. Similarly, the petitioner cannot take advantage of order passed by this Court, which is based on circular of IG of registration that too before the order passed by Division Bench in *Kathirvel case* cited supra.

14.The allegations of impersonation, forgery etc., raised by the



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petitioner are all matter for evidence. It can be proved by the petitioner by leading evidence in the regular civil proceedings. This Court in exercise of its power under Article 226 of Constitution of India cannot conveniently decide the question of facts raised by the petitioner regarding impersonation and fraud. Further, as mentioned earlier, the official respondents are not empowered to cancel the documents by going into the question of impersonation or fraud after registration of the documents. The Hon'ble Apex Court in *Satya Pal Anand Vs. State of M.P. And Ors* reported in *MANU/SC/1359/2016* held that once document is registered, the registering authority has no power to cancel the registration, even assuming some irregularity in the process of registration is brought to his notice subsequent to registration of the document. The only remedy available to the party is to approach the civil Court. In this regard, it would be appropriate to refer to the observation of the Apex Court, which reads as follows:

“27. The Andhra Pradesh High Court, in the case of *Yanala Malleshwari* (supra) was called upon to consider whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer like



*District Registrar and/or Sub-Registrar appointed by the State Government is bound to refuse registration when a cancellation deed is presented. The fact remains that if the stipulation contained in **Sections 17 and 18** of the Act of 1908 are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in Sections such as 19 to 22, 32 and 35. At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenge the registration and validity of the document before the Civil Court. (Emphasis supplied by this Court). The majority view of the Full Bench was that if a person is aggrieved by the Extinguishment Deed or its registration, his remedy is to seek appropriate relief in the Civil Court and a Writ Petition is not the proper remedy.”*

15. Thereafter, the Hon'ble Apex Court proceeded to observe as follows:

“ 30.. Once the document is registered, it is not open to any Authority, under the Act of 1908 to cancel the registration. The remedy of appeal provided



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under the Act of 1908, in part XII, in particular Section 72, is limited to the inaction or refusal by the Registering Officer to register a document. The power conferred on the Registrar by virtue of Section 68 cannot be invoked to cancel the registration of documents already registered.”

16.Following the law laid down by the Apex Court in the above case, I hold that the registering authority cannot go into the question of forgery or impersonation subsequent to the registration of the document. Therefore, I do not find any reason to interfere with the impugned order, especially after order passed by the 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)***, striking down Section 77A of the Registration Act and circular issued by the IG of Registration to nullify the document.

17.In view of the discussion made earlier, I am not impressed by the submissions made by the learned counsel for the petitioner and accordingly, the writ petition stands dismissed. However, it is open to the petitioner to work out her remedy before the Civil Court. The petitioner is entitled to exclude the time taken by her in prosecuting the matter before this Court



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and also the first respondent, while calculating the limitation for filing the civil suit.

18.With this observation, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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S.SOUNTHAR,J.

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To
The District Registrar,
Registrar Office, Collectorate,
Krishnagiri-635 115.

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and
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