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WP.No.16300 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.07.2024**

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.16300 of 2024 &

WMP.Nos.17841 & 17842 of 2024

1. G.Rathna

2. O.Krishnaveni

... Petitioners

.. Vs ..

1. The Inspector General Registration and Stamps,
No.100, Santhome High Road, Chennai – 600 028
Tamil Nadu, India.

2. The District Registrar,
O/o.District Registrar, Vellore,
Fort Campus, Vellore Fort, Vellore – 632 002.

3. The Sub Registrar,
Joint Sub Registrar – I Vellore,
Integrated Building of Registration Department,
Veppamara Street, Velappadi, Vellore – 632 001.

4. Radha Rukmani

5. Podhumani

6. P.Purushothaman

7. P.Umamaheswaran

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records in connection with the Order passed by the second respondent dated 25.04.2023 in No.7405/B1/2022 and



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quash the same.

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For Petitioners : Mr.C.Kumar
for Y.Kaja Navas

For Respondents : Mr.B.Vijay
Additional Government Pleader – R1 to R3

Mr.K.N.Pandian – R4 & R5

No appearance – R6 & R7

ORDER

Since no adverse Order has been passed against the sixth and seventh respondents, notice to them is dispensed with.

This writ petition is filed to quash impugned Order passed by the second respondent in proceedings No.7405/B1/2022, dated 25.04.2023 cancelling the settlement deed executed in favour of the sixth and seventh respondents and dated 02.07.2009 and sale deed executed by the sixth and seventh respondents in favour of the petitioners dated 16.12.2023.

3. Heard learned counsel for the petitioners and the learned Additional Government Pleader appearing for the respondents 1, 2 and 4 and the learned



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Counsel appearing for the fourth and fifth respondents and perused the materials available on record.

4. The brief facts leading to passing of the impugned Order is as follows :

The subject properties originally belonged to one Vilvapathy Mudaliar. According to the writ petitioner, the said Vilvapathy Mudaliar has executed a registered Will dated 20.05.1959 bearing document No.126 of 1970. Thereafter, he has also executed another Will on 05.12.1970 and the said Will has also been registered as document No.126 of 1970. The petitioner's father, after the death of Vilvapathy Mudaliar, the beneficiary under the Will has executed a settlement deed in favour of the sixth and seventh respondents on 02.07.2009 and the same has been registered as document No.5818 of 2009. Pursuant to the said settlement deed, the sixth and seventh respondents have executed a sale deed in favour of the petitioners on 16.12.2013 registered as document No.14886 of 2013. The District Registrar entertained the complaint given by the fourth and fifth respondents and has cancelled all these document mainly on the ground that the Will relied upon by the parties are already held to be invalid by a competent Civil Court. The sixth and seventh respondents are said to be the children born to Vilvapathy Mudaliar through his first wife Kuppammal. Based on the complaint given by the fourth and fifth



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respondents, the second respondent has passed the Order mainly on the ground that the Will relied upon by the parties is not valid one and cancelled all other documents.

5. The learned counsel appearing for the petitioners would submit that the impugned Order cannot be sustained in the eye of law for the simple reason that the suits filed by the parties in O.S.Nos.120 of 2013 and 284 of 2015 are still pending. Originally, a suit in O.S.No.274 of 2013 has been filed for permanent injunction by the sixth and seventh respondents. The writ petitioner as the plaintiff relied upon the Will dated 05.12.1970, as the other side has disputed the Will, the learned Judge held that since the Will is disputed and all of them are co-owners, injunction cannot be granted. At this stage, this interlocutory Order in I.A.No.708 of 2012 has been produced before the registering authority and the District Registrar, in fact has taken that interim Order as a final judgment with regard to the Will and cancelled all the documents.

6. Whereas, the learned counsel appearing for the fourth and fifth respondents would submit that while passing the Order in the interim injunction application in I.A.No.708 of 2012 in O.S.No.274 of 2013, the Court has held that since the Will is disputed and the parties have admitted that they



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are joint possession and common enjoyment of the property, has rightly refused to grant injunction. Therefore, according to the respondents, once the Will relied upon the parties is not believed by the Court, the impugned Order has been rightly passed and the same cannot be find fault with.

7. A perusal of entire materials, particularly the impugned Order, it is seen that there are two Wills said to have been executed by Vilvapathy Mudaliar dated 20.05.1959 and 05.12.1970 and both the Wills are registered documents. It is well settled that mere registration of the Will will not be sufficient to prove its validity. Will has to be proved in the manner known to law. Further, the parties have dealt with the property on the strength of the Will and executed documents, viz., settlement deed dated 02.07.2009 in favour of the sixth and seventh respondents, the beneficiaries under the Will, who inturn had executed the sale deed in favour of the writ petitioner. Therefore, merely because transactions have been taken on the basis of the Will, it cannot be said that those documents are fraudulent or forgery. Therefore, the District Registrar assuming the role of a Civil Court and cancelling the documents itself is not proper. The fourth and fifth respondents, who relied upon the earlier Will of the year 1950, has lodged a complaint with the District Registrar.



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8. Much emphasis has been made on the Order passed by the Sub Court in an interlocutory application in I.A.No.708 of 2023 in O.S.No.274 of 2013. A perusal of the said Order, it is seen that the Sub Court has declined the relief of interim injunction, while passing such an Order, the Sub Court has observed that since the Will relied upon the parties are disputed by the other side and all the parties are in joint possession of the property, at this stage, interim injunction cannot be passed. Therefore, only on that context, the Order in the interlocutory application has been passed. Mere objections in the application filed for interim injunction that the Will relied upon by the parties is disputed, that does not mean that the validity of the Will has been tested with evidence. Therefore, relying upon the interim Order, cancellation of the documents cannot be sustained in the eye of law. It is also stated by both sides that the suit in O.S.No.120 of 2013 for partition is also pending between the parties and that apart a suit in O.S.No.274 of 2013 is also pending in a competent Civil Court. Therefore, any sale made on the basis of the Will is always subject to the result of the suit. In such view of the matter, the District Registrar has no power to cancel the documents and going to the merits of the Will cannot be sustained in the eye of law. The Will has to be proved in the manner known to law. It is for the propounder not only to prove the execution of the Will but also attestation, besides, he has to dispel various other suspicious circumstance. These are matters for evidence and appreciation by



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the competent Civil Court in the light of the evidence tendered. Hence, without any materials, at one stroke, for the sake of some allegations, the documents have been annulled by the registering authorities and the same has to be quashed.

9. Accordingly, this Writ Petition is allowed and the impugned Order passed by the second respondent dated 25.04.2023 stands quashed. No costs. Consequently, connected miscellaneous petitions are closed. It is for the parties to establish their right in the pending suits.

23.07.2024

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

Note : Issue Order copy on 05.08.2024

To,

1. The Inspector General Registration and Stamps,
No.100, Santhome High Road, Chennai – 600 028
Tamil Nadu, India.
2. The District Registrar,
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N. SATHISH KUMAR, J.

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