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W.A. No.2964 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19-02-2024

PRONOUNCED ON: 22-03-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.A. No.2964 of 2023

J. Rajasekar

... Appellant / Petitioner

-VS-

1. The Principal Secretary
to the Government of Tamil Nadu
Registration Department
Fort St. George, Chennai – 600 001.
2. The Inspector General of Registration
Santhome High Road
Mylapore, Chennai – 600 001.
3. The District Registrar
Coimbatore District
Collectorate Campus
Coimbatore.
4. The Sub Registrar
Office of the Sub Registrar
Kinathakavadu
Coimbatore District.



5. The Royal Land and Nest
Cooperative Housing Society
AP 8073, D.No.11, 2nd Street
H Block, 12th Main Road,
West Anna Nagar, Chennai.
6. Nachiyappan
7. V. Bragaleeshwarar
8. A. Arulanandam ... Respondents / Respondents

Prayer: Writ Appeal as against the order dated 19.04.2022 passed in
W.P. No. 21530 of 2021.

For Appellant : Mr. N. Nithianandam
For Respondents-1 to 4 : Mrs .P. Raja Rajeswari,
Government Advocate
For Respondent 5 : Mrs. A.L. Gandhimathi
Senior Counsel
(for Mr. S. Arivazhagan)

ORDER

[ORDER MADE BY K. RAJASEKAR, J.]

This Appeal has been filed challenging the order dated 19.04.2022
passed in W.P. No. 21530 of 2021, wherein the learned Single Judge of this
Court has dismissed the Writ Petition filed by the appellant herein.



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2. The facts leading to filing of this appeal is brief as follows:

3. The property comprised in Survey Nos.314, 315, 318, 318/1, 319 to the total extent of 9.90 acres situated in Nallatipalayam, Kinathukadavu Taluk, Coimbatore District was sold by the original owners represented by the power agent namely Srinivasan to the The Royal Land and Nest Cooperative Housing Society (Society hereafter), by way of sale deed dated 19.08.2013 and the same was kept pending registration for want of payment of sufficient stamp duty. Subsequently, in the year 2017, a Civil Suit was filed by the Vendors against the Society seeking declaration of the non-registered sale deed, dated 19.08.2013 as null and void. After filing of Civil Suit, the vendors sold the property in favour of the petitioner herein as per the sale deed dated 12.04.2018.

4. In the year 2018, the Society filed a Writ Petition in W.P. No.13195 of 2018 seeking directions to register the sale deed, dated 19.08.2013, and the same was allowed. Meanwhile, the petitioner herein also filed a Writ petition against the Vendors and Society in W.P. No. 10915 of 2020, for writ of mandamus preventing the respondents from registration



of the sale deed dated 19.08.2013, and it was disposed of with observations that the petitioner herein has to independently prove his right over the property before the Civil Court.

5. Subsequently on 04.08.2021, the second respondent issued a letter to the District Registrar stating that, subsequent sale deed dated 12.04.2018, in favour of the petitioner shall be construed as a fraudulent document and permitted the registration of sale deed executed by the Society. This letter and observation made therein assailed in the present writ petition and also to cancel the sale agreements and the sale deed executed by the Society, in the name of Respondents 6 to 8.

6. The learned counsel for the petitioner submitted that in the impugned Order, the first respondent has observed that the sale deed executed in favour of the petitioner herein is a fraudulent document and this finding has been rendered without proper notice to him and the same is liable to be set aside.

7. The learned counsel for the Society submitted that they have



purchased the property from the Vendors in the year 2013, and registration of sale deed was kept pending for want of sufficient stamp duty, by the Sub-Registrar. Subsequently, the deficit stamp duty was also paid under Section 47-A of the Registration Act. Accordingly, they became absolute owner of the property prior to execution of sale deed in favour of the petitioner. The Society is having valid title over the property. The subsequent sale deed in favour of the petitioner is a collusive act and the learned Single Judge has rightly dismissed the writ petition herein and prays to confirm the same.

8. We have considered the submissions made on both sides and also perused the materials available on record.

9. The petitioner herein prayed for direction to the Registrar, to cancel the registered documents executed by the Society, after setting aside the observation made in impugned letter dated 04.08.2021. The power of Registering Authority to cancel the registered deeds, considered by the Apex Court in *Satya Pal Anand vs. State of Madhya Pradesh [(2016) 10 SCC 767]*, in Paragraph Nos. 34, 35 and 36 as follows:



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“34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan(supra). Section 17 of the Act of 1908 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 Act of 1908 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 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.

35. The procedure for registration of documents is spelt out, inter alia, in part VI of the Act of 1908. Section 32 of the said Act reads thus:

PART VI OF PRESENTING DOCUMENTS FOR REGISTRATION

*32. Persons to present documents for registration.-
Except in the cases mentioned in [Sections 31, 88 and 89],
every document to be registered under this Act, whether*



such registration be compulsory or optional, shall be presented at the proper registration office-

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assignee of such a person, or

(c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

36. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the Extinguishment Deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitly to cause loss and harm to the other party to the Deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the Act of 1908 enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the Act of 1908 can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the Civil Court.”



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10. In State of Tamil Nadu, power to cancel the registered documents incorporated under the Registration Act, by way of amendment under Tamil Nadu Registration Act 41 of 2022, with effect from 16.08.2022 and Section 77-A & 77-B were inserted by way of amendment enabling the District Registrar as a original Authority for cancellation of the document and the Controlling Authority of the registration is provided with the appeal power. Whereas in this case, at the time of execution of documents which are sought to be cancelled, the Authorities have no power to cancel the registered document and the prayer sought in the writ petition to cancel various documents is not maintainable.

11. The First Respondent in his letter has observed that the subsequent sale deed dated 12.04.2018 executed between the petitioner and vendors of the disputed property as invalid and permitted the registration of sale deeds executed by the Society. It is an internal communication between the Respondent No.2 to Respondent No.3. Admittedly, the vendors of the petitioner have already filed Civil Suit in O.S. No.311 of 2017 on the file of District Munsif, Pollachi seeking the declaration of sale deed executed in



favour of Society as null and void. Similarly, the petitioner herein has also filed Civil Suit in O.S. No. 93 of 2020 seeking permanent injunction, against the respondents from disturbing his peaceful possession and enjoyment. Since, the owner-ship and validity of the sale deeds have to be decided in the appropriate Civil proceedings, we are of the view that deciding the same in this Writ proceedings is not permissible and both parties have to workout their remedies only in the pending Civil Suit already filed. The learned Single Judge, has rightly relegated the parties herein to adjudicate their rights before the Civil Court and this Court finds no infirmity in the Order impugned herein.

13. With the above observations, the present writ appeal stands disposed of. However, there shall be no order as to costs.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

22-03-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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WEB COPY

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S.M.SUBRAMANIAM, J.
AND
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Pre-delivery Judgment made in
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