



W.P.No.25398 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 10..07..2024

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Writ Petition No.25398 of 2022

and

W.M.P.No.24376 of 2022

M/s.Orient Confectioneries Ltd.,
Rep. by its General Power of Attorney,
Mr.A.Krishnamoorthy,
Son of late Adhinarayanan,
No.36, E-Homes, 1st Floor,
III Phase, ICL Home Town,
Noombal, Chennai 600 077.

..... Petitioner

-Versus-

- 1.The Inspector General of Registration,
No.100, Santhome High Road,
Mylapore, Chennai 600 028.
- 2.The District Registrar,
Registration Department,
No.10, Kanchipuram Main Road,
Chengalpattu 603 002.
- 3.The Sub Registrar,
Sub Registrar's Office,
Sriperumbudur SRO,
No.16/8, Chetty Street,
Sriperumbudur 602 105.



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4.S.Moultou

5.Razik Ahamed Gani

..... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 2 and 3 to cancel / annul the two sale deeds dated 28.05.2022 executed in favour of the 4th respondent vide Doc.Nos.4806 and 4810 of 2022 registered on the file the office of the Sub Registrar, Sriperumbudur and consequently direct the respondents 1 to 3 to remove further encumbrances made in the said properties on 27.06.2022 vide Doc.Nos.5971 and 5972 of 2022 registered on the file of the office of the Sub Registrar, Sriperumbudur, within the time frame to be fixed by this court.

For Petitioner : Mr.K.Sivasubramanian

*For Respondent (s) : Mr.B.Vijay,
Addl. Government Pleader for RR1
to 3*

Mr.T.T.Ravichandran for R4

Mr.K.K.Shivashanmugham for R5

ORDER

This writ petition has been filed seeking a writ in the nature of mandamus, directing the respondents 2 and 3 to cancel / annul the two sale deeds dated 28.05.2022 executed in favour of the 4th respondent vide Doc.Nos.4806 and 4810 of 2022 registered on the file of the office of the Sub Registrar, Sriperumbudur and consequently direct the respondents 1 to 3 to



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remove further encumbrances made in the said properties on 27.06.2022 vide

Doc.Nos.5971 and 5972 of 2022 registered on the file of the office of the Sub Registrar, Sriperumbudur, within the time frame to be fixed by this court.

2.0 The brief facts leading to the filing of the present writ petition are as under:-

2.1 The petitioner-A.Krishnamoorthy was appointed as the Power Agent of M/s.Orient Confectionaries Limited represented by its Managing Director-Mr.Subramanian through a registered Power of Attorney dated 29.03.2022 vide Doc.No.2646 of 2022 on the file of the Sub Registrar, Sriperumbudur. Accordingly, the petitioner (Power Agent) executed two sale deeds on 28.05.2022 for a consideration of Rs.90,58,400/- and Rs.55,94,500/- respectively in favour of the 4th respondent which were registered as Doc.Nos.4806 of 2022 and 4810 of 2022 on the file of the Sub Registrar, Sriperumbudur. The 4th respondent issued two different cheques towards sale considerations (1) Cheque No.100072 dated 28.05.2022 for Rs.90,58,400/- drawn on CSB Bank, Puducherry and (2) Cheque No.100070 dated 28.05.2022 drawn on CSB Bank, Puducherry, for Rs.55,94,500/-. After the registration of sale deeds, when the cheques were presented for collection, the same were not honoured and were returned.



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2.2 The 4th respondent fraudulently got executed the sale deeds in his favour without payment of consideration, and therefore, such transfers without consideration are void and no title in respect of the properties that are subject matter in the documents conveyed to the 4th respondent. The 4th respondent, however, having purchased the properties without paying sale consideration, within one month thereafter, sold those properties at a rate less than the market value guidelines. Thus, the 4th respondent played fraud upon the petitioner, and therefore, the transfers made in favour of the 4th respondent are void as they were not supported by consideration. Hence, this writ petition.

2.3 A counter affidavit has been filed by the 4th respondent opposing the writ petition and *inter alia* contending that at the instructions of the petitioner an amount to the tune of Rs.1.00 crore was paid to various nominees of the petitioner (power agent) on 28.05.2022 through banking channel. The details of the beneficiaries who had received the sum are:-

Sl.No.	Name of the Account Holder	Account Number	Amount in Rupees
1	Lokesh Raj Logaiah	110075398929	5,00,000
2	Mohan	007701507100	5,00,000
3	L.Logaiah	405351574	5,00,000
4	Devamani	10943825630	5,00,000
5	Kalaiselvi	405283524	5,00,000
6	Kavitha	0029053000007946	5,00,000



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Sl.No.	Name of the Account Holder	Account Number	Amount in Rupees
7	Visalakshi	15301000019425	5,00,000
8	SPS Enterprise	920020040415379	5,00,000
9	Vanavil Enterprises	164402000000342	50,00,000
10	Ashok Krishnan	01411050056475	10,00,000
		Total	1,00,00,000

2.4 The 4th respondent further contended that he came to know that the petitioner (power agent) had swallowed the consideration and has not accounted for the proceeds of the sale. Therefore, the principal can prosecute its power agent (petitioner) for the offence of fraud.

3. A counter affidavit has been filed by the 5th respondent opposing the writ petition and claiming to be the bonafide purchaser of the property measuring an extent of 1 Acres and 67 cents comprised in S.No.256/1 at Mevalurkuppam 'A' Village and 1 Acre and 67 cents comprised in S.No.329 at Mevalurkuppam 'B' Chettipedu village, Sriperumbudur Taluk and Kancheepuram District through a sale deed dated 27.06.2022 from the 4th respondent under registered Doc.Nos.5971 and 5972 of 2022 on the file of the Sub Registrar, Sriperumbudur. Non-payment of sale consideration that, by itself, would not entail cancellation of any sale deed that was properly executed



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and registered by the executant. Whether the sale price was partly paid or not

fully paid by the 4th respondent to the petitioner is a question of disputed facts between the petitioner and the 4th respondent. The petitioner has other remedy even in the said circumstances either for recovery of unpaid full sale price or unpaid part sale price from the erring party. The petitioner is also entitled to a charge upon the property under Section 55(4)(b) of the Transfer of Property Act and not for cancellation of sale deed. Non payment of sale price does not make the registered sale deed as a fraudulent transaction.

4. A formal counter affidavit has been filed by the 3rd respondent admitting the sale transactions and inter alia contending that non payment of sale consideration in a sale transaction cannot be a ground to hold that the sale deed is a fraudulent one and the remedy for the petitioner is to approach the competent civil court.

5. Heard both sides.

6.1 The learned counsel for the petitioner would submit that when the sale consideration was unpaid and sale deed has been obtained by fraudulent means, such sale deed is liable to be annulled.

6.2 The learned counsel in support of his submissions relied upon the judgements of Division Benches of this court in the cases of (1) **Netvantage**



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Technologies Private Limited v. Inspector General of Registration

[W.A.No.3391 of 2023 dated 20.03.2024]; (2) **K.J.Sumathy and 2 others v.**

The District Registrar [W.P.No.27120 of 2018 dated 02.11.2021] to buttress his submission that the sale deeds in question were the result of fraud and thus, the sales can be annulled by the District Registrar.

6.3 The learned counsel for the petitioner would further in support of his above submission rely upon the judgement of a single Judge of this Court in the case of **M.Anbzhagan v. The District Registrar** [W.P.No.11471 of 2022].

7. The learned counsel for the 4th respondent per contra would contend that the writ petition involves disputed questions of fact regarding payment of consideration, and therefore, this court cannot go into the same, and it is for the civil court to decide the issue of fraud, which should be pleaded and established on evidence in the manner known to law.

8. At the out set, it may be appropriate to state here that 4th respondent in his counter asserted that the petitioner (power agent) had swallowed the amount and not accounted for the sale proceeds and hence, it is for the principal to initiate appropriate action against its power agent. The 4th respondent specifically averred in his counter that at the instructions of the



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petitioner (power agent) only he had paid a sum to the tune of Rs.1.00 crore to

the nominees identified by the petitioner himself through banking channel.

These are all disputed questions of fact which cannot be gone into in a writ proceedings. Merely because cheques were not honoured it cannot be assumed that the sales were not supported by considerations.

9. It is the settled law that when a sale is not supported by consideration, the remedy available for the petitioner is to file a suit for a decree and judgement for recovery of money and to create charge upon the property and for any other relief as per the law. The unpaid vendor's lien is always available which can be enforced in the manner known to law, however, within a period of limitation prescribed therefor under the Law of Limitation.

10. The judgements of the Division Benches of this court upon which much reliance were placed cannot be applied to the present case as they were on different set of facts. Here, in the instant case, the dispute is with regard to payment of sale consideration. The 4th respondent asserted that he had paid the entire consideration. Such a disputed question of fact cannot be gone into by a writ court as it is a matter of evidence which be decided only by the civil court.

11. Another judgement of this court cited by the learned counsel for the petitioner in the case of **M.Anbzhagan v. The District Registrar** is also of



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no avail to the petitioner as on appeal by Dr.P.V.R.K.Anjaneeya Guptha, the

3rd respondent therein, a Division Bench of this Court by judgement dated 13.06.2024 made in W.A.NO.1057 OF 2023 set aside the order of the single judge of this Court. Upon taking note of the object of the Registration Act and the judgements of the Hon'ble Supreme Court to the effect that aim of the Registration Act, 1908 is to govern documents and not the transactions embodied therein and the Registration Act provides only a procedure for transfer of immovable property and to maintain a record of such transfers and it does not either create or extinguish title in immovable property by itself, the Division Bench of this court has held that it is for the civil court to decide the issue. The relevant paragraph of the judgement of the Division Bench of this Court reads as under:-

“17. At least in Tamil Nadu, the Legislature has introduced Section 22-A and B and corresponding Rule 55-A Registration Act, which enables the Registrars to cancel the document under certain limited circumstances. Equivalent provisions or similar provisions have not been introduced in Puducherry. Therefore, the power or role of the Registering Authorities functioning in Puducherry is limited and it cannot be extended to cancellation of instruments. Even assuming the sale consideration has not been paid, we do not think that the cancellation of the



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instrument could be ordered even by the Court. It will be open to the first respondent herein to enforce the Understanding Deed dated 30.03.2021 by invoking the civil remedy of specific performance.”

12. The law requires that fraud must be pleaded and proved on evidence in the manner known to law that can be tested under cross-examination. Plea of fraud cannot be gone into merely on the basis of pleadings that too by the writ court. Further more, the principal has not approached the court and only the Power Agent is before this Court. As already discussed supra, this court cannot go into the disputed questions of facts and it is for the petitioner to workout his remedy before the civil court having jurisdiction, if he so wishes, in the manner known to law.

In the result, the writ petition is dismissed, however, with the above observations. No costs. Consequently, connected WMP is closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

WEB C

- 1.The Inspector General of Registration, No.100, Santhome High Road, Mylapore, Chennai 600 028.
- 2.The District Registrar, Registration Department, No.10, Kanchipuram Main \ Road, Chengalpattu 603 002.
- 3.The Sub Registrar, Sub Registrar's Office, Sriperumbudur SRO, No.16/8, Chetty Street, Sriperumbudur 602 105.

N.SATHISH KUMAR.J.,
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