



W.P.No.27290 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 13.12.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.27290 of 2024 and
W.M.P.Nos.29793 & 29795 of 2024

1.L.KALAVATHI
W/O LOGANATHAN
2.E.SANTHI
W/O EASWARAN
3.S.DEVAKI
W/O LOGU

.. **Petitioners**

Vs.

1. THE DISTRICT REGISTRAR
OFFICE OF THE DISTRICT REGISTRAR G.N.ROAD
THOTTATHUPALAYAM TIRUPPUR DISTRICT.
2. INSPECTOR GENERAL OF REGISTRATION
OFFICE OF THE REGISTRAR NO.100
SANTHOME HIGH ROAD RAJA ANNAMALAIPURAM
CHENNAI-28.
3. THE TAHSILDAR
KALLANGADU TIRUPPUR SOUTH TIRUPPUR.
4. DISTRICT COLLECTOR
PALLADAM ROAD KARUPPAGOUNDANPALAYAM
TIRUPPUR DISTRICT.
5. SUB REGISTRAR



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SUB REGISTRAR OFFICE THOTTIPALAYAM MGR NAGAR
CHETTIPALAYAM TIRUPPUR.

6. BALASUBRAMANIAM
S/O GOVINDASAMY
7. GOVINDAMMAL
S/O GOVINDASAMY
8. VIMALACHITRA
D/O GOVINDASAMY

.. **Respondents**

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records relating to the order dated 30.05.2023 passed by the 1st respondent in the proceedings in Na. Ka. No. 6224 /A5/ 2022 and quash the same.

For the Petitioners	: Mr.D.Prasanna for M/s. P.V.S.Giridhar Associates
For the Respondents	: Mr.C.Sathish, Govt. Advocate for RR1 to 5 Mr.S.Mukunth, Senior Counsel for Mr.Sam Jayaraj Houston for M/s Sarvabhauman Associates for RR6 to 8

ORDER



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This Writ Petition is filed challenging the order dated 30.05.2023 passed by the 1st respondent in Na. Ka. No. 6224 /A5/ 2022. By the said order in the exercise of powers under Section 77A of the *Registration Act, 1908*, (in short 'the Act') document Nos.659/2005, 189/2007, 3148/2007 and 3624/2007 were held to be fraudulent documents and are violative of Section 22 (B) of the Act. Aggrieved by the same, the petitioners have filed the present Writ Petition.

2. The brief factual background in which this Writ Petition arises is that admittedly, one *Govindasamy* is the original owner of the property. On 04.10.2002, he appointed one *Appukutty* as his power of attorney agent. While so, he cancelled the power of attorney on 06.06.2003. However, the said *Appukutty* had chosen to execute a document even after the cancellation of power of attorney, on 04.04.2005 and subsequently, other documents were also executed and as such it is the contention of the said *Govindasamy* and his legal heirs that they continued to be the owners of the property. With that contention, they filed a Civil Suit in O.S.No.238 of 2009 on the file of the Sub Court, *Tiruppur*, with a prayer to declare that the sale deed dated 04.04.2005 and the subsequent documents as null and void and unenforceable and for consequential relief of permanent injunction.



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3. It is stated that the said suit came to be dismissed for default on 11.02.2013. Thereafter, the said *Govindasamy* approached the District Registrar with a relief to declare that these four documents were fraudulent and to be removed from the encumbrance of the property. On a petition, a detailed enquiry was conducted by the District Registrar and by an order bearing Ref.Na.Ka.No.6528/A5/2018 dated 30.10.2018, the District Registrar held that the documents were not fraudulent and therefore, rejected the claim and passed an order.

4. Thereafter, based on the said order, the Revenue Divisional Officer also rejected the claim of respondents 6 to 8 to remove the name of the petitioners from the patta by an order dated 17.10.2022. Once again, the respondents / legal heirs of the original owner of the property had submitted a petition to the very same District Registrar, *Tiruppur* and once again, the District Registrar, chose to conduct an enquiry, but, this time, held that the documents are fraudulent and exercised the power under Section 77 A of the Act, to hold that these documents are violative of Section 22 (B) of the Act. Aggrieved by the same, the present Writ Petition was filed.



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5. Heard, *Mr.D.Prasanna*, the learned counsel appearing on behalf of the petitioners; *Mr.S.Mukunth*, the learned Senior Counsel appearing on behalf of respondents 6 to 8 and *Mr.C.Sathish*, the learned Government Advocate appearing on behalf of respondents 1 to 5.

6. Firstly, it can be seen that the Division Bench of this Court by a batch of Writ Petitions in W.P.Nos.10291 of 2022 etc, dated 02.08.2024 had held that Section 77A of the Act itself as unconstitutional and had also ordered that the orders which were passed are liable to be set aside. In view thereof, the impugned order has to be set aside.

7. Apart from the above, the learned counsel on either side argued the matter on merits. In this case, on merits, *Mr. Mukunth*, the learned Senior Counsel would submit that merely because the Civil Suit, filed by the respondents 6 to 8 and their father, came to be dismissed for default, the said decree will not confer title on the petitioners herein. It goes without saying that when the petitioners traced their title only through the document executed by the said *Appukutty*, the power of attorney



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agent from Govindasamy when the power of attorney was cancelled on 06.06.2003 before the execution of the sale deed in favour of the petitioners and their predecessors, then on the day of execution of the sale deed, there was no inherent right on the power of attorney agent. In this case, the cancellation document was on 06.06.2003 and the same was also registered before the appropriate registering authority.

8. The learned Senior Counsel would rely upon the definition of the phrase “a person is said to have notice” as contained under Section 3 of the *Transfer of Property Act, 1882* to contend that if, by willfully abstaining from an inquiry or search, which both the power of attorney agent and the purchaser should have made, they fail to do so, it should be deemed that the knowledge is imputed to them. Therefore, once the power of attorney agent is deemed to have notice, then he has inherently no authority and therefore, even by the dictum of the Division Bench, it is the Civil Court that has the authority to decide the issue of the title and the person who has purchased the property from the power of attorney agent, who inherently did not have the authority should only approach the Civil Court.



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9. I have given my anxious consideration to the said arguments. The learned Senior Counsel would also rely upon Section 201 of *the Contract Act*. In this case, even before this Court, no categorical averments have been made regarding any registered notice being served on the power of attorney, nor any such document, acknowledgement card, or written notice have been produced. As per Section 208 of the *Contract Act*, the termination of an authority of an agent would take effect only if it becomes known to him. Therefore, this is a question to be decided by the competent Civil Court as to whether all the subsequent transactions were carried out after notice by the power of attorney agent. The arguments relating to the inherent incapability would not arise in this case. But, the incapability has to be established and proved, and in the absence thereof, the agent is deemed to be an agent.

10. In this regard, the learned Senior Counsel would rely on the Explanation - I contained in Section 3 of *the Transfer of Property Act*, to contend deemed service. I am of the view that if the authority of the agent is to be decided solely by considering a legal argument and by considering the issue of deemed service, even then it must be determined only by a Civil Court. In any event, it cannot be termed



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as a fraudulent document to be decided by the Registrar. Therefore, by considering the spirit of the Division Bench Judgment (cited supra), I am of the view that the contention of the learned Senior Counsel cannot be accepted and also that the order of the Registrar cannot be permitted to stand.

11. This apart, yet another glaring act of the District Registrar in the instant case is that, earlier when a petition was filed before the self-same authority, after conducting an enquiry, by a detailed order dated 30.10.2018, the very prayer of the very same petitioners have been refused. It is an abuse of process to entertain a second petition in respect of the same relief and take a different view and hold that the documents are fraudulent. For all the above reasons, I am of the view that the Writ Petition deserves to be allowed.

12. At this juncture, it is brought to the notice of this Court that an order of interim stay of the order was granted by this Court on 20.09.2024 and in spite of the order, respondents 6 to 8 presented a document and the authorities have also registered the document in Doc. No.5035 / 2024.



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13. The learned counsel for the petitioners seeks liberty to initiate separate contempt proceedings in respect of the same. I am of the view that instead of initiating contempt proceedings, relief can be granted to the petitioners in the present order itself.

14. The Writ petition is allowed on the following terms :

(i) the order dated 30.05.2023 passed by the 1st respondent in Na. Ka. No. 6224 /A5/ 2022 stands quashed;

(ii) The document bearing No.5035 / 2024 on the file of the 5th respondent shall have no effect whatsoever, *vis-a-vis* the petitioners are concerned. The petitioners shall continue to enjoy the property without being affected by the said document in any manner whatsoever.

(iii) No costs. Consequently, connected miscellaneous petitions are closed.

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Neutral Citation : Yes

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D.BHARATHA CHAKRAVARTHY, J.

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