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W.P. No.26877 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P. No.26877 of 2021 and
W.M.P. Nos.28324 and 28325 of 2021

1.Kantha
2.S.Jothi
3.S.Malliga

. . Petitioners

Vs

1.The Inspector General of Registration
100, Santhome High Road
Chennai - 600 028

2.The Deputy Inspector General of Registration
Chennai Zone
Commercial Taxes and Registration Dept. Building
Nandanam, Chennai - 600 035

3.The District Registrar (Admn)
District Registrar Office
No.52, Orikai Madura
Udayamankulam
Kancheepuram - 631 502

4.The Sub Registrar
Office of the Joint Sub Registrar II
Kancheepuram - 631 502
Kanchipuram District

5.S.Shanmugham

. . Respondents



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PRAYER: Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned order made in Na. Ka. No.2303/Aa1/2021 dated 04.10.2021 passed by the 2nd respondent, quash the same and consequently direct the petitioners and the 5th respondent to agitate their property dispute in the pending civil suits.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.B.Vijay, AGP for R1 to R4
Mr.M.Kempuraj for R5

ORDER

This writ petition has been filed challenging the order dated 04.10.2021 passed by the Deputy Inspector General of Registration, wherein he has allowed the appeal and set aside the document executed by the petitioners.

2. The brief facts leading to the filing of the writ petition are that the petitioners are the sisters of the fifth respondent. They executed a settlement deed in favour of their children. Prior to that, there were release deeds also in favour of their father and mother. A complaint has been given by the fifth



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respondent to the Registering Authority. The District Registrar, in his order has rejected the complaint holding that he has no power to cancel the said document. However, in appeal, the Deputy Inspector General of Registration/2nd respondent has held that the document has been fraudulently registered, therefore not valid and non-suited the documents.

3. The learned Additional Government Pleader appearing for the respondents 1 to 4 and the learned counsel appearing for the fifth respondent submitted that their parties have filed their counter affidavits and during their submissions it is stated that there were suits pending, one for claiming partition in O.S. No.132 of 2021 on the file of the Principal District Judge, Kancheepuram filed by the petitioner and the other one is filed by the fifth respondent in O.S. No.177 of 2021 on the file of II Additional District Judge, Kancheepuram for declaring the settlement deed executed by the petitioners as null and void and that both the suits are pending. In such view of the matter, this court is of the view that the Registering Authority, particularly, the second respondent ought not to have entertained the appeal and he should have dismissed the appeal.

4. A perusal of the order of the second respondent makes it clear that the second respondent has assumed the jurisdiction of a civil court and in fact, he



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has gone into the Will without the Will being admitted in evidence and he has gone into the intention of the testator that they executed it on the basis of the Will. If such powers of the Civil Court are assumed by the Registering Authority, the time is not too far to close all the civil litigations and entrust everything to the Registering Authority. When the law did not empower such power under the Registration Act to cancel the document allegedly executed fraudulently, the Registering Authority or the Appellate Authority cannot assume the role of the civil court and decide the matter as a civil court.

5. What is introduced by way of Section 77-A is to annul the document which was registered contrary to Section 22A and 22B of the Registration Act. When the registration has taken place in respect of a temple property as prohibited in Section 22A, then the Registering Authority has power to go into those document and cancel the document. Similarly, when the document registered is forged one or any other property which was subject matter of any attachment by the competent authority or the court or Tribunal, the Registration is prohibited and those documents can be annulled as per the amendment brought under by way of Section 77A.

6. This court is of the view that even a blanket power to annul the



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document on the ground that there was an attachment also leads to serious consequences. If the attachment is only for a lesser value, the same is reflected in the encumbrance, it will lead to serious consequences and in fact same will deprive the right of the true owner to enjoy the property or deal with the property. The limitation itself for execution of money degree is 12 years from the date of decree. If the attachment reflected more than 12 years, it will prevent the owner from dealing with property. Be that as it may, as the power to cancel not vested with the Registering Authority to go into the details, merely on the allegation of fraudulent of registration of document, the document cannot be annulled. Even a person alleging fraud, the onus always lies on the person alleging such fraud. It requires not only pleadings but also proper proof which is the scheme of the proof of fact. In such view of the matter merely on the bald allegation entertaining such complaints and cancelling the documents will lead to serious consequences.

7. Considering all these facts, the order passed by the second respondent stands set aside. Since the parties have already filed civil suits they can agitate their respective rights in the pending suits.

8. With the above observation, the writ petition is disposed of. No costs.



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Consequently the connected writ miscellaneous petitions are closed.

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03.04.2024

Index : Yes / No

Speaking/non speaking order

Neutral Citation : Yes/No

Asr

To

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5.The Government Pleader

High Court, Madras



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N. SATHISH KUMAR, J.

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