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W.P.No.32523 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.32523 of 2024

and

W.M.P.Nos.35345 and 35347 of 2024

P.Gopinath

... Petitioner

Vs.

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

2.The District Registrar,
Office of The District Registrar, Vellore,
Fort Campus, Vellore Fort, Vellore-632 002.

3.A.V.Rathika Devi

4.V.Komala Devi

5.N.Rajesh

6.N.Sathish

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of Certiorari, call for the records in
connection with the order passed by the 2nd respondent dated 01.02.2022
in No.1993/B1/2021 and quash the same.



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For Petitioner : M/s.Y.Kajanavas

For Respondents : M/s.B.Vijay, AGP,
for R1 & R2.

ORDER

Challenging the order passed by the 2nd respondent dated 01.02.2022 in and by which the 2nd respondent had cancelled the sale deed executed by respondents 4 to 6 in favour of the petitioner, the petitioner is before this Court.

2. It is the case of the petitioner that he had purchased the property comprised in Old No.26, New No.73, Avulkara Street, Kosapet, Vellore bearing Survey No.1464/1, 1464/2B, 1463/2C, measuring an extent of 3189 sq.ft., under a sale deed dated 10.04.2017, from respondents 4 to 6 who are the successor in interest of the original owner one Govindajalu Naidu. It is the contention of the petitioner that based on the complaint lodged by the 3rd respondent, the sale deed dated 10.04.2017 has been cancelled by the 2nd respondent, without reference to the petitioner. Hence, the petitioner is before this Court.

3. Heard the learned counsel on either side.



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4. The constitutional validity of Section 77-A, 77-B and 22-B of the Registration Act which have been introduced by the Registration [Tamil Nadu Second Amendment Act] 2021 [Act 91 of 2022] and its retrospective operation had been referred to the Division Bench in the case of ***M.Kathirvel Vs. Inspector General of Registration Department of Registration and Others*** reported in (2024) 4 CTC 769. The division bench after tracing the history of the enactment and considering the various judicial precedence had held as follows:-

"84. The object of Registration Act is only to maintain public record in relation to immovable properties. Merely because a document executed by a person without title is registered, that does not affect the title of true owner. In other words, the question of title cannot be decided merely on the basis of registered documents of conveyance, even though such documents may be considered as evidence of transactions. Cancellation of a registered instrument after the transfer of right in immovable property is often the subject matter of suit under Section 31 or



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Section 34 of the Specific Relief Act. By registration, the Registering Officer only gives the seal of approval to the instrument and by registration, the Registering Officer does not recognise the title of individuals. Registration is a formality to complete the transfer of conveyance between two parties. A power conferred on the registering authority to cancel the registration is not therefore provided under the Act unless the document of conveyance or cancellation is signed by both parties. Even though the object of Registration Act and the amending Act are not different from the grounds on which the cancellation of registered deeds can happen under Section 77-A, we are of the view that the impugned legislation is nothing but creation of a new forum in the place of Civil Court. This cannot be permitted by constitutional Courts to protect the rights of parties to the documents.

85. Even the Civil Court's jurisdiction to cancel the instrument is only when the transaction as such, is



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hit by any provisions of Indian Contract Act for being void or voidable. Article 56 of Schedule to Limitation Act deals with suits to declare the forgery of an instrument issued or registered. The limitation for filing a suit is three years from the date of execution or from the date when the plaintiff comes to know about the registration. Article 59 of Schedule to Limitation Act prescribes three years for filing a suit to cancel or to set aside an instrument or decree. Limitation starts when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside become known to the plaintiff. Section 27 of the Limitation Act extinguish the right to property at the determination of the period limited to any person for instituting a suit for possession of any property. The principle underlying Section 27 of the Limitation Act is that a person who is having a right to possession fails to file a suit within the prescribed period of limitation, will leave his title in favour of the party in possession. Now



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under Section 77-A of the Registration Act without any restriction, even documents which were registered some decades ago, can be challenged and the registration of the same can be cancelled on specific grounds which are enumerated under Section 22-A and Section 22-B. In the counter affidavit, the respondents have admitted this position and supported the enactment on the principle of equity. Even though a suit filed under Section 31 of Specific Relief Act is dismissed on the ground of limitation, power under Section 77-A can still be exercised by the Registrar. This situation renders the enactment unconstitutional being contrary to the doctrine of separation of power.

86. When judicial Forum administered by qualified and trained judges who are accountable and guided by procedures, norms, principles and precedents is available, providing parallel remedy before executive authority to decide as to the legal sanctity of registered documents, is unconstitutional.



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There is no certainty to any documents of conveyance if an executive authority is given unguided power which can also be misused to invalidate even genuine transaction in the absence of proper guidelines by legislation."

Thereafter upon considering a few cases which had been decided by the Registrar and which was the subject matter of challenge, the division bench had held as follows:-

" From the above discussion on this issue and from perusal of the records including the orders of Registrar under Section 77-A in some of the cases and the principles laid down by Hon'ble Supreme Court above referred to, this Court is unable to sustain the impugned provision, particularly, Section 77-A and has no hesitation to strike down Section 77-A for being contrary to the fundamental principle that judicial power to decide substantial rights of the parties involving complicated issues on facts and law resulting in serious legal implications affecting the property rights of parties to the transactions cannot be



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delegated to executive authorities."

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5. Therefore, in the light of the above judgement striking down Section 77-A of the Registration Act as unconstitutional, the impugned order cannot be sustained and accordingly the Writ Petition is allowed and the impugned order passed by the 2nd respondent dated 01.02.2022 is set aside. No costs. Consequently, the connected Miscellaneous Petitions are closed.

08.11.2024

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

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