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W.P.No.3120 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

W.P.No.3120 of 2024

AND

W.M.P.No.3397 of 2024

S.Sulochana

.. Petitioner

Vs

1.The Inspector General of Registration
No.100, Santhome High Road
Chennai 600 028

2.The Deputy Inspector General of Registration
Integrated Registration Building Complex
Kumaragiri By-pass Road
Near Udaiyappatti Power House
Ammamet, Salem 636 014

3.The District Registrar (Salem West)
Room No.313, Collectorate Building
O/o.The District Collector Office
Salem 636 001

4.The Sub Registrar
Magudanchavadi Sub Registrar Office
Sankari Taluk, Salem District

5.S.Subramani

6.S.Deenathayalan

7.S.Ramasamy

.. Respondents



W.P.No.3120 of 2024

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for the records relating to the impugned proceedings order No.5358/E2/2022 dated 31.07.2023 passed by the 2nd respondent in continuation of the order passed in Na.Ka.No.4868/E4/2020 dated 30.09.2021 and quash the same as illegal and unlawful.

For Petitioner	Mr.S.Anil Sandeep for M/s. Law Vision
For RR 1 to 4	Mr.Stalin Abhimanyu Additional Government Pleader
For RR 6 & 7	Mr.S.Prabhu

ORDER

In this writ petition, challenge has been made to the order dated 31.07.2023 passed by the 2nd respondent, confirming the order passed by the District Registrar/3rd respondent, annulling the settlement deed dated 18.05.2020 executed by the petitioner in favour of her son.

2. Facts leading to the filing of this writ petition are as under :

2.1. Originally, a complaint was given by the 5th respondent, who is the elder brother of the petitioner, claiming that their father had left a registered will dated 20.02.2007 in favour of the 5th respondent. However, the petitioner had executed a settlement deed in favour of her son, as if the property



W.P.No.3120 of 2024

absolutely belongs to her. While registering the settlement deed, the patta which stood in the name of the petitioner's father, was shown as patta of the petitioner, as if there were no other legal heirs. Therefore, this settlement deed was sought to be annulled by the 5th respondent on the ground of forgery on the part of the petitioner.

2.2. Before the original authority/3rd respondent, notice was served on the petitioner on 21.01.2021 during the COVID-19 pandemic. However, the petitioner did not appear. Thereafter, based on the written submissions made by the 5th respondent, the 3rd respondent had passed an order dated 30.09.2021, cancelling the settlement deed on the ground that it is a fraudulent document.

2.3. Opposing the said cancellation, an appeal was filed by the petitioner before the 2nd respondent. The 2nd respondent upheld the finding of the original authority/3rd respondent, however, directed the original authority/3rd respondent to receive the complaint once again under Section 77-A of the Registration Act, 1908 and decide the matter afresh. Challenging the said orders passed by the respondents 3 and 2, the present writ petition has been filed.



W.P.No.3120 of 2024

WEB COP 3. Heard the learned counsel for the parties and perused the materials available on record.

4. The main contention raised by the learned counsel appearing for the petitioner is that though the petitioner's father had executed a registered will on 06.02.2007, thereafter, he had cancelled the same and executed another will on 20.02.2007 in favour of the petitioner. By virtue of the said will, the petitioner became the absolute owner of the property, after the demise of her father on 05.07.2007. After a period of 13 years, a complaint came to be filed against the petitioner, that too, when the petitioner had executed a settlement deed in favour of her son in the year 2020. Hence, according to him, the original authority/3rd respondent has gone into the validity of the sale and held that the will was forged, which finding is not based on any evidence and hence, the same cannot be sustained.

5. It is the stand of the official respondents in their counter that though notice was served on the petitioner to appear before the 3rd respondent on 21.01.2021, she failed to appear in person. However, based on the documents produced by the 5th respondent, order dated 30.09.2021 came to be passed by



W.P.No.3120 of 2024

the 3rd respondent. Hence, according to him, the impugned orders cannot be interfered with.

6. The learned counsel appearing for the respondents 6 and 7 submitted that suppressing the fact that there are other legal heirs, who are also entitled to a share in the property, the petitioner had executed the settlement deed, as if she is the absolute owner of the property, relying on the patta which stood in the name of her father. That apart, there is no whisper whatsoever made in the unregistered will executed in favour of the petitioner as to why the registered will dated 06.02.2007 was cancelled and in respect of the extent of land also, there was a difference. Hence, according to him, the orders passed by the respondents 2 and 3 do not require interference.

7. On a perusal of the orders impugned, this Court is of the view that entertaining the complaint made by the 5th respondent and annulling of document by the Registering authorities cannot be sustained in the eye of law, for the simple reason that originally, the complaint given by the 5th respondent has been entertained, based on the circular orders issued under Section 68(2) of the Registration Act, 1908.



W.P.No.3120 of 2024

8. At this juncture, it is worth pointing out that this Court has held that circular under Section 68(2), *ibid.*, can be issued only in respect of superintendence and control over the authorities. In this regard, in ***Satya Pal Anand Vs. State of M.P. and Others [2016(10) SCC 767]***, the Apex Court has clearly held that the registering authorities have no power to cancel a document under Section 68(2), *ibid.*, unless there is a specific provision in the Act.

9. Only thereafter, the Government realised the issue and brought about an amendment by way of Sections 22-A and 22-B, *ibid.* Even while bringing about the amendment under Section 22-B, *ibid.*, in the notes on clauses, it is the stand of the Government that till the amendment, there were no provisions whatsoever in the Registration Act, 1908, to cancel a document and therefore, an amendment is required and hence, the amendment is introduced by way of Sections 22-A and 22-B, *ibid.* Consequently, Section 77-A, *ibid.*, is also introduced.

10. On a careful perusal of Section 77-A, *ibid.*, it is seen that the Registrar gets power to go into the documents, which are registered contrary to the provisions contained under Sections 22-A and 22-B, *ibid.* Section 22-A, *ibid.*, relates to the property of the Government and other religious charitable



W.P.No.3120 of 2024

endowments, etc., whereas, Section 22-B relates to the document which is the result of forgery and any document relating to the attachment made by the competent authority or Court, etc. Therefore, the essential requirement for entertaining a complaint under Section 77-A is that the document must be a forged one. Forgery has been defined in the IPC. Thus, only when the making of false document has been established, the same comes within the ambit of Section 464 IPC. This aspect has been clearly held in ***Mohammed Ibrahim Vs. State of Bihar and Another [(2009)8 SCC 751]***. Considering these facts, this Court has elaborately dealt with the power of the registering authorities in ***G.Rajasulochana Vs. The Inspector General of Registration and Others (W.P 29706 of 2024 decided on 16.04.2024)***.

11. Hence, this Court is of the view that the dispute is primarily with regard to establishing the will and that the petitioner claims by virtue of the latter will though it is unregistered, whereas, the 5th respondent relies upon the registered will dated 06.02.2007. Whether there is an unregistered will which supercedes the previous registered will, is a matter of evidence that has to be proved in the manner known to law. A will has to be tested on the touchstone of evidence adduced in this regard and also attestation is to be established by the parties. That apart, testamentary capacity of the testator also has to be



W.P.No.3120 of 2024

established in the manner known to law. These are all the factors which require proper pleadings as per the procedure established and the pleadings have to be proved in the manner known to law, considering the various provisions of the Indian Succession Act, Evidence Act, *etc.* Therefore, such being the scenario in proving the will, the registering authority cannot compare the signature in both the wills and hold that one of the wills is not valid in the eye of law.

12. Considering the entire materials and the impugned orders, this Court is of the view that there is no element of forgery involved in this case. In such perspective of the matter, the impugned orders passed by the 2nd respondent and the 3rd respondent are quashed and accordingly, this writ petition stands allowed. No costs. Connected miscellaneous petition is closed. It is for the petitioner and the 5th respondent to establish their rights, based on the so-called wills in a competent civil Court.

15.07.2024

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Index : Yes/No

Neutral Citation : Yes/No



W.P.No.3120 of 2024

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WEB COPY



W.P.No.3120 of 2024

N.SATHISH KUMAR, J.

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W.P.No.3120 of 2024

15.07.2024