



W.P.(MD)No.4400 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.4400 of 2023
and W.M.P.(MD)Nos.4139 & 4141 of 2023

1.Dawood Ammal
2.P.K.Abdul Khadar

... Petitioners

Vs.

1.The Inspector General of Registration,
Registration Department,
Santhome, Chennai.

2.The District Registrar (Administration),
Registration Department,
Kumbakonam Registration District,
Kumbakonam,
Thanjavur District.

3.The Sub Registrar,
Registration Department,
Thiruppanandal,
Kumbakonam Taluk,
Thanjavur District.

4.Smt.P.A.S.Jannath Gani

5.P.S.Jamruth Begam

.... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent pertaining to the impugned order in Mu.Mu.No. 4070/I/2022 dated 01.02.2023 and quash the same as illegal and consequently direct the 3rd respondent not to make any entries regarding the property situated in R.S.No.165/1B at Cholapuram Village, Kumbakonam Taluk, Thanjavur District and to restore the entries in respect of Settlement Deed in Doc.No.508/2016 dated 26.05.2016 created by the 1st petitioner in favour of 2nd petitioner herein.

For Petitioner : Mr.S.Meenakshisundaram,
Senior Counsel for
Mr.V.Karthikeyan

For Respondents : Mr.M.Siddharthan,
Addl. Govt. Pleader for R1 to R3
Mr.M.Saravanan for R4 & R5

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent pertaining to the impugned order in Mu.Mu.No.4070/I/2022 dated 01.02.2023 and quash the same as illegal and consequently direct the 3rd respondent not to make any entries regarding the property situated in R.S.No.165/1B at Cholapuram Village, Kumbakonam Taluk, Thanjavur District and to restore the entries in respect of



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Settlement Deed in Doc.No.508/2016 dated 26.05.2016 created by the 1st petitioner in favour of 2nd petitioner herein.

2. Heard the learned counsel for the petitioners, the learned Additional Government Pleader appearing for the respondents 1 to 3 and the learned counsel appearing for the respondents 4 and 5 and perused the materials available on record.

3. It is the case of the Writ Petitioners that the subject property originally belonged to one Ameena Beevi. Ameena Beevi married one Abdul Kareem. Out of wedlock, the petitioner's father was born. The petitioner's grandfather died. After his death, the said Ameena Beevi contracted a second marriage with one Sheik Dawood. Out of the said wedlock, the 4th respondent Jannath Gani, Noorjahan and Sulthan Batcha were born to them. Therefore, the petitioner's mother, the 4th respondent, and the legal heirs of Sulthan Batcha are entitled to get share in the subject property. At this juncture, the first petitioner executed a settlement deed dated 26.05.2016 in favour of the 2nd petitioner in respect of her undivided share over the subject property. Thereafter, the first petitioner has filed a suit in O.S.No.167 of 2013 for partition against the respondents 4 and 5 and the same is pending. The respondents 4 and 5 have also filed a suit for partition in



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O.S.No.19 of 1996, without impleading the petitioners and the said suit was also decreed. Hence, the petitioners filed a petition to implead themselves as parties to the proceedings. The said petition was dismissed. As against the same, the 2nd petitioner has filed a Civil Revision Petition in C.R.P.(MD)No.1829 of 2019 and the said petition was dismissed on 29.10.2021 holding that the petitioners cannot claim any share in the property left behind by the said Ameena Beevi. Based on the said order, Section 77-A of the Registration Act has been invoked and the impugned order has been passed cancelling the settlement deed dated 26.05.2016 executed by the first petitioner in favour of the 2nd petitioner. Challenging the same, the petitioners have filed this Writ Petition.

4. The learned Senior Counsel appearing for the petitioner would submit that civil dispute is pending between the parties and merely on the basis of the decision in the impleading applications, wherein it is observed that the petitioners are not legal heirs of Ameena Beevi, the documents already registered cannot be cancelled. Therefore, the impugned order is liable to be set aside.

5. The learned counsel appearing for the respondents 4 and 5 submitted that claiming to be the legal heirs of Ameena Beevi, the settlement deed has been



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executed by the 1st petitioner in favour of the 2nd petitioner. This Court, while dismissing the Civil Revision Petition filed by the 2nd petitioner, has clearly held that they are not the legal heirs of Ameena Beevi. Therefore, the petitioners did not derive any title in the document. Hence, the impugned order does not require any interference.

6. At the outset, this Court is of the view that the power of Registering Authority invoking Section 77-A of the Registration Act, 1908 to cancel the registered document is ill-founded for the simple reason that Section 77-A dealt with the documents registered contrary to the provisions under Sections 22-A and 22-B of the Registration Act. Section 22-B deals with the forged instrument. Only in case forged instrument is registered despite the bar contained in Section 22-B, such forged document would be cancelled by invoking Section 77-A of the Registration Act. However, just mere raising the issue with regard to the title, Section 77-A could not have been invoked. The parties believing themselves as a owner have executed a document. Such an act will not come within the ambit of forgery or creation of false evidence as held by the Honourable Supreme Court in ***Mohd. Ibrahim v. State of Bihar***, reported in ***(2009) 8 SCC 751***, wherein it is held that unless the document in question comes within the category of a false



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document as defined in Section 464 of the IPC, there cannot be a case of forgery and the same cannot be cancelled. Therefore, invoking Section 77-A will not arise in this case to cancel the document. Now Section 77-A of the Registration Act, 1908 also is struck down by the Hon'ble Division Bench of this Court in W.P.No. 10291 of 2022 batch as unconditional. If the order of this Court holding that the petitioners would not get any share of Ameena Beevi and that order reaches finality, it is for the respondents 4 and 5 to register the decree before the concerned Registrar and it will take care of it for cancelling the document. Therefore, the impugned order is liable to be set aside.

7. Accordingly, the impugned order of the 2nd respondent dated 01.02.2023 stands quashed and the Writ Petition is allowed. The 3rd respondent is directed to restore the entries in respect of the settlement deed dated 26.05.2016, executed by the 1st petitioner in favour of the 2nd petitioner. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes/No
vsm



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