



W.P.(MD)No.4590 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.4590 of 2023
and
W.M.P.(MD)No.4296 of 2023

1. R.Prema
2. R.Vijaya

... Petitioners

versus

1. The District Registrar (Admin)
cum Assistant Inspector General
of Registration,
O/o. The District Registrar,
Thoothukudi,
Thoothukudi District.

2. The Zonal Deputy Tahsildar,
Thiruchendur,
Thoothukudi District.

3. P.Durairaj

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the 1st respondent in his proceedings Mu.Mu. 7319/A4/2022 dated 15.02.2023 and quash the same as illegal, arbitrary and without jurisdiction.



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For Petitioner : Mr.B.Saravanan,
Senior Counsel
for Mr.D.Kirubakaran
For R1 and R2 : Mr.M.Siddharthan
Additional Government Pleader
For R3 : Mr.G.Thalaimutharasu

ORDER

This writ petition is filed challenging the order passed by the first respondent in his proceedings in Mu.Mu.7319/A4/2022 dated 15.02.2023, cancelling the sale deed dated 15.07.2019 executed by the second petitioner in favour of the first petitioner.

2. The learned Senior Counsel appearing for the petitioner submits that a house property in Old S.No.241/1, New S.No.1517/42 admeasuring to an extent of 01.01.63 hectares situated at Town Sannathi Street, Keela Thiruchendur Village, Thiruchendur Taluk, Thoothukudi District, originally belonged to one M.Shanmuga Pilla. During his life time, in a sound and conscious state of mind, he has executed an unregistered Will dated 06.06.2016 in favour of the 2nd petitioner with respect to the aforesaid house property. Later, the said Shanmuga Pillai died on 05.10.2016. Subsequent to the death of the testator, the said Will came into effect and thereafter, patta was also transferred to the name of the 2nd petitioner, by proceedings of the second



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respondent, dated 07.06.2019. Thereafter, in the month of July 2019, the 1st petitioner has purchased the said house property from the 2nd petitioner, vide a registered sale deed in Document No.1440/2019 dated 15.07.2019 and from the date of purchase, the first petitioner is in possession of the property. While so, the 3rd respondent claimed that the said M.Shanmuga Pillai has executed a Will dated 20.07.2016 in his favour and by claiming so, he gave a complaint to the 1st respondent on 13.09.2022, seeking to cancel the sale deed dated 15.07.2019 on the ground of fraudulent registration of the sale deed dated 15.07.2019 by production of bogus patta and also to initiate criminal prosecution as against the petitioners. But, the first respondent came to a conclusion that the sale deed in Document No.1440/2019 dated 15.07.2019 has been executed in a fraudulent manner and passed the impugned proceedings dated 15.02.2023 cancelling the Document No.1440/2019 dated 15.07.2019. Challenging the same, the present writ petition has been filed.

3. The learned Senior Counsel further submits that the 3rd respondent claimed title over the house property based on the Will dated 20.07.2016 executed by the said M.Shanmuga Pillai in his favour. The first respondent traced title of the property in dispute based on the two different Wills dated



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06.06.2016 and 20.07.2016 and came to a conclusion that the 3rd respondent is the title holder of the house property in dispute. The learned Senior Counsel further submits that Section 77A of the Registration, which empowers the Registrar to cancel documents, came into force only on 16.08.2022. However, the first respondent, by invoking the powers provided under Section 77A of the Act, has passed the impugned order cancelling the sale deed registered on 15.07.2019. Therefore, the impugned order is passed without jurisdiction and the same is liable to be set aside.

4. Heard the learned Senior Counsel appearing for the petitioners as well as the learned Additional Government Pleader and the learned counsel appearing for the 3rd respondent.

5. The Registering Authority has no power to go into this issue and to cancel any registered document, as per the law laid down by the Hon'ble Supreme Court in *Satya Pal Anand vs. State of Madhya Pradesh and others* reported in (2016) 10 SCC 767 and also by this Court in *G.Rajasulochana Vs. Inspector General of Registration and others* (W.P.No.29706 of 2022).



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6. The validity of Wills dated 06.06.2016 and 20.07.2016 cannot be decided by the Registering Authority and it is a matter of evidence to be decided only by the competent Civil Court. But, without any evidence and without any foundational facts, the first respondent came to a conclusion that the 3rd respondent is the title holder of the house property in dispute and also ordered for cancellation of Document No.1440/2019 dated 15.07.2019, which is not sustainable in law. Therefore, the impugned proceedings passed by the 1st respondent dated 15.02.2023 is liable to be set aside.

7. Accordingly, this writ petition is allowed and the impugned proceedings passed by the 1st respondent in Mu.Mu.7319/A4/2022 dated 15.02.2023 is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

29.08.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No.
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N.SATHISH KUMAR, J.

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