



W.P(MD)No.9865 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.9865 of 2024

- 1.D.Ayyappan
- 2.Kavitha
- 3.Vijaya
- 4.Annakamu
- 5.Saroja

... Petitioners

Vs

- 1.The District Registrar South,
O/o.District Registrar South,
Madurai.

- 2.The Sub Registrar Office,
Madurai South,
Madurai.

- 3.S.Sonaimuthu
- 4.S.Saravanakumar
- 5.S.Balasubramaniyan
- 6.M.Subha
- 7.S.Gopi
- 8.S.Senthilkumar
- 9.S.Kannan
- 10.Dhanapalan

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No. 4913/A2/2022 dated 25.09.2023 on the file of the first respondent and quash the same as illegal and consequently for a direction, directing the first respondent to cancel all the deeds which is



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executed with the forged legal heir certificate by the third respondent.

For Petitioners : Mr.A.Ganesan
For RR 1 & 2 : Mr.D.Sadiq Raja
Additional Government Pleader
For RR 3 to 6 : Mr.B.Jameel Arasu
For RR 7 to 10 : No appearance

ORDER

This Writ Petition has been filed by the petitioners challenging the order passed by the first respondent dated 25.09.2023 thereby rejecting the request made by the petitioners seeking cancellation of various deeds executed in respect of the properties owned by the petitioners grandfather.

2.The petitioners' maternal grandfather Subramani Pillai had one son and four daughters. The third respondent is the son of the said Subramani Pillai, the respondents 4 to 6 are sons and daughter of the third respondent and the respondents 7 to 10 are the purchasers of the subject property. The petitioners' maternal grandfather and grandmother owned properties. While being so, on 16.10.1992 their maternal grandfather died leaving behind his wife



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Pappammal, son/the third respondent and four daughters. On demise of their maternal grandfather, the third respondent, by suppressing the other legal heirs such as the petitioners' grandmother and four sisters of the third respondent, obtained a legal heirship certificate as if he is the lone legal heir of their maternal grandfather. By relying upon the said legal heirship certificate, the third respondent had settled some portions of the properties in favour of the respondents 4 to 6. They had also entered into partition deed and thereafter, they had sold out the subject property in favour of the respondents 7 to 10 herein. On verification of the Encumbrance Certificate, the petitioners came to understand about the deeds which were executed by the respondents 3 to 6 in respect of the subject properties. Therefore, they lodged a complaint to cancel those documents under Section 77-A of the Registration Act, 1908 before the first respondent. The said complaint was rejected on the ground that there is a title dispute between the petitioners and the respondents 3 to 10 and as such, the said issue cannot be considered and rejected the complaint.



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3.The learned counsel appearing for the third respondent filed a counter-affidavit and on the submissions made by Mr.B.Jameel Arasu, learned counsel appearing for the respondents 3 to 6 would reveal that during the lifetime of the third respondent's father, all the sisters got married and they were given sreedhana articles, gold, silver articles and also payment of several lakhs in respect of their shares. During his lifetime, the third respondent's father executed a will in favour of the third respondent in respect of all his properties. That apart, the properties stand in the name of his mother were initially settled in favour of the elder sister Nagarathinam and subsequently, she relinquished her share and executed a release deed in favour of her mother. Thereafter, his mother had executed a settlement deed dated 06.10.2011 in respect of the property which was purchased by her in favour of the third respondent. Thereby, the third respondent derived title over the entire properties and had settled some portion of the properties in favour of the respondents 4 to 6 and subsequently partitioned the same between them. Finally, the properties were sold out in favour of the respondents 7 to 10. Further, a complaint was lodged by the petitioners to cancel the documents which were executed by the respondents 3 to 6 under Section 77-A of the Registration Act, 1908. However, the said provision was declared as unconstitutional



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by the Hon'ble Division Bench of this Court. Therefore, the complaint lodged by the petitioners was rightly rejected by the first respondent.

4.On perusal of the settlement deed, partition deed and sale deed executed by the respondents 3 to 6 would reveal that the third respondent derived title over the subject properties as the lone legal heir of his deceased father. His father died on 16.10.1992 leaving behind his wife, the third respondent and four daughters. The third respondent suppressed the said facts and obtained a legal heirship certificate as if he is the only legal heir of his deceased father. On the strength of the legal heirship certificate, he had executed a settlement deed, partition deed and finally sale deed. In fact, the legal heirship certificate issued in favour of the third respondent was challenged before the Revenue Divisional Officer. By an order dated 15.12.2023 in the proceedings in Mu.Mu.No. 6561/2023/A1, the legal heirship certificate was cancelled and the petitioners were directed to obtain a fresh legal heirship certificate from the authority concerned as per the documents. Though the petitioners are grandchildren of the deceased maternal grandfather, they are representing on behalf of their respective mother, who are



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the daughters of the deceased maternal grandfather and their mother have their respective share in the properties owned by their maternal grandfather.

5.It is true that the provision under Section 77-A of the Registration Act, 1908 is declared as unconstitutional by the Hon'ble Division Bench of this Court. But while registration of deeds committed forgery, the prosecution can be initiated by declaring the documents which were forged one. The third respondent, on the strength of the forged legal heirship certificate, had executed a settlement deed, partition deed and sale deed. It is relevant to extract the provision under Section 83 of the Registration Act hereunder:

'83. Registering officers may commence prosecutions.—

(1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.



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(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.'

6. Therefore, the registering authority can initiate prosecution for the offence committed under the Registration Act, 1908. However, the cancellation of the legal heirship certificate was issued on 15.12.2023, whereas the first respondent rejected the complaint by order dated 25.09.2023. Therefore, there is no possibility to look into the cancellation of the legal heirship certificate by the first respondent. Further, the first respondent failed to conduct any enquiry on the complaint lodged by the petitioners. In view of the above, the order passed by the first respondent, dated 25.09.2023 cannot be sustained and the same is liable to be quashed.

7. Accordingly, the order passed by the first respondent, dated 25.09.2023 is quashed and the matter is remitted back to the first respondent for conducting fresh enquiry, in the light of the cancellation of the legal heirship certificate dated 15.12.2023, after



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giving due opportunity of hearing to the petitioners as well as respondents 3 to 10 herein and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. Further, the first respondent is also directed to look into the recital of the deeds which were executed by the respondents 3 to 6 with regard to the derived title over the subject properties. The second respondent is directed to initiate prosecution as against the respondents 3 to 6 for the production of a forged legal heirship certificate while registering the settlement deed, partition deed and sale deed.

8. With the above directions, this Writ Petition is allowed.

There shall be no order as to costs.

**19.11.2024
(1/2)**

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

- 1.The District Registrar South,
O/o.District Registrar South,
Madurai.
- 2.The Sub Registrar Office,
Madurai South,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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(1/2)**