

W.A.No.643 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2025

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE C. KUMARAPPAN**

Writ Appeal No.643 of 2025

T.Thevarasan

.. Appellant

VS

1.The Sub Registrar Joint II,
South Chennai, Chennai 600 002.

2.The District Registrar,
South Chennai, Chennai.

3.The Deputy Inspector General of Registration
Combined Commercial Tax and
Registration Department,
Compound, Ground Floor,
Veterinary Hospital Road,
Penpet, Nandanam,
Chennai – 600 035.

.. Respondents

Prayer : APPEAL filed under Clause 15 of the Letters Patent against the

Order dated 16.04.2024 made in W.P.No.11897 of 2023.



W.A.No.643 of 2025

For Appellant : Mr.N.Naganathan

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For Respondents : Mr.U.Baranidharan
Special Government Pleader

JUDGMENT

(Delivered by Dr.ANITA SUMANTH..J)

The writ petitioner is the appellant. He had filed the writ petition seeking a writ of Certiorarified Mandamus, challenging orders of the District Registrar (R2) and Deputy Inspector General of Registration (R3) dated 29.01.2020 and 27.02.2023 and consequential direction to the respondents to cancel settlement deed dated 29.01.2016. The writ petition had come to be dismissed by an order dated 16.04.2024, as against which, the present writ appeal has been filed.

2.The case of the writ petitioner was that he is the owner of the property at Plot No.10 at Rajagopal Street, comprised in Old Survey No.77/2, Old T.S.No.4, 4/26, Saidapet Village, Mambalam Taluk (property/property in question). The appellant had permitted one N.Ganapathy, who was his brother-in-law to reside in that house along with his wife, who was his sister. The sister had passed away in 1986 after which, said Ganapathy is stated to have resided in that house along with a lady by name Suseela.



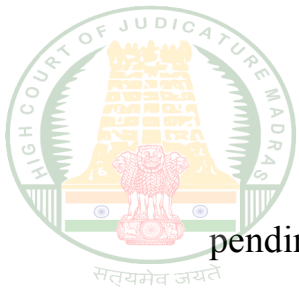
W.A.No.643 of 2025

3.The appellant would allege that he had taken efforts to evict the couple from the property in question and on account of the difficulties faced in evicting them, had filed a police complaint as early as on 14.01.1989.

4.While so, Ganapathy passed away on 22.06.2016 without leaving behind any legal heirs. Thereafter, Suseela, according to the appellant, had executed a settlement deed fraudulently as though the property in question had been settled in her favour. Coming to know of the same, the appellant had moved an application before the authority seeking cancellation of the settlement deed suffering the orders impugned in the writ petition.

5.By way of detailed order, the writ Court has concluded that the authorities do not have the power to cancel a settlement deed. In any event, the writ Court could not have considered the arguments that the settlement deed had been executed fraudulently and that the signatures of Ganapathy had been forged, as they require marshalling and appreciation of facts and evidence.

6.The writ Court further notes the admitted position that the same parties i.e. the writ petitioner and Ganapathy, were engaged in civil disputes, and that Second Appeal in S.A.No.494 of 2019 is presently



W.A.No.643 of 2025

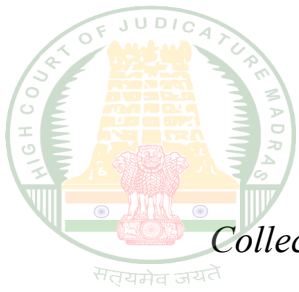
pending before this Court, at the instance of appellant.

WEB COPY 7. For the aforesaid reasons, the Court concludes that the proper remedy for the appellant would be to file a suit to establish his right in the Civil Courts, making it further clear that any observations made in order dated 16.04.2024 would not stand to the deterrent of the parties in deciding such suit, if and when filed.

8. The appellant is aggrieved for the reason that, according to him, the settlement deed has been executed fraudulently. For this purpose, he would make an attempt to compare the personal details of the settler with the Aadhar card of Ganapathy, which is placed in the typed set. He draws attention to the mismatch in father's name as well as the voter I.D. number. We are not inclined to look into these particulars as this would entail an appreciation of disputed facts.

9. It is the specific grievance of the appellant that Ganapathy had died without legal heirs and in fact, the Second Appeal, pending before this Court would have abated on his demise in 2016. This, again constitutes a question of fact, as the Court is unaware as to status of Ganapathy and whether or not he has legal heirs.

10. The writ petitioner has placed reliance on a decision of the Full Bench of this Court in *Sasikala v. Revenue Divisional Officer-cum-Sub-*



W.A.No.643 of 2025

Collector and another [2022 (5) CTC 257]. In that case, the Court was

concerned with the permissibility or otherwise of a unilateral cancellation of sale deed. The Court has, in that context, opined that there are certain factual situations where a registering authority may have been persuaded to receive a document for registration and if a person aggrieved by such registration approaches the writ Court, the writ Court is not always barred from invoking extraordinary jurisdiction in consideration of such matters.

11.Per contra, Mr.U.Baranidharan, learned Special Government Pleader, who appears for the State relies on the decision of the Division Bench of this Court in *M.Kathirvel and others v. Inspector General of Registration and others* [2024 (4) CTC 769], wherein one of the prayers considered by the Division Bench was a declaration that Section 77A of the Registration Act was null and void.

12.After a detailed hearing, the Division Bench had struck down Section 77A providing for cancellation of registered documents in certain cases. At paragraph 158, the Bench has summarised certain principles culled out from a slew of decisions referred to therein:

'158.From the catena of judgments above referred to, we are able to summarise the following principles that emerge from the above precedents:



WEB COPY



W.A.No.643 of 2025

- (a)The Court must analyse the nature of amendment whether the amendment is substantive intend to change the law or procedural or clarificatory in nature. When amendment is substantive creates a new obligation or a right it cannot be given retrospective application.*
- (b)Retrospective operation should not be given to a statute to take away or impair an existing right or impose a new liability otherwise than as regards matters of procedure.*
- (c)Amendments that create rights and obligations are generally prospective in nature and law which is clarificatory or explanatory should not have the effect of imposing an unanticipated duty or depriving a party of an anticipated benefit.*
- (d)When the intention is to affect the existing rights, the statute which is expressed in a language which is fairly capable of either interpretations, ought to be construed as prospective.*
- (e)An essential requirement for application of a provision retrospectively is to show the previous legislation had any omission or ambiguity and the amendment is intend to supply the omission or to remove the ambiguity.*
- (f)The amendment will be considered to be clarificatory only when the pre-amended law is vague or ambiguous and it is impossible to reasonably interpret a provision unless the amendment is read into it. Merely because a provision is described as clarification in nature, the Court is not bound by the statement in the statute itself, but must proceed to analyse the nature of amendment and then conclude whether the amendment is clarificatory or substantive.*
- (g)When a challenge to legislation is in relation to procedure, the law amending the procedure will be held retrospective in operation.*
- (h)Even a procedural statute should not generally*



WEB COPY



W.A.No.643 of 2025

be applied retrospectively when the result would be to create new disabilities or obligations or to impose a new duties in respect of transactions already accomplished.

(i)A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.

(j)A statute which while procedural in its character, affects vested rights adversely is to be construed as prospective. In other words, an accrued right to plead a time bar, which is acquired after the lapse of the statutory period is nevertheless a right, even though it arises under an Act which is procedural and a right which is not to be taken away pleading retrospective operation.

(k)When the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations, the general rule is that the statute is prospective.

(l)If the amendment or substituted provisions contain any substantive provisions which create new rights, obligations or take away any vested rights, then such amendment or substitution cannot automatically be assumed to have come into force retrospectively.

(m)A retrospective legislation is contrary to the general principles that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transaction carried on upon the faith of the then existing law.

(n)Legislation which modify accrued rights or which impose obligation or attach a new disability, have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect.'



W.A.No.643 of 2025

13.The Bench also refers to Section 68(2) of the Act which confers power on the District Registrar to cancel documents for irregularities in registration holding that with the striking down of Section 77A of the Act as unconstitutional and contrary to the object of the Registration Act, any circular, direction or order enabling the District Registrar or Registering Officer to cancel registration or invalidating any transaction, would also be unconstitutional. This order has, as on date, attained finality.

14.Hence, quite apart from the disputed factual aspects that present themselves in this matter, the position in law, as on date, is that the authorities under the Registration Department do not have the power to cancel registered documents.

15.In light of this discussion as above, we find no infirmity in the order of writ Court and dismiss this Writ Appeal. We reiterate that liberty available to the writ petitioner to seek his remedies before the appropriate Civil Court. No costs.

[A.S.M., J] [C.K., J]
21.03.2025

Index:Yes
Speaking order
Neutral Citation:Yes
vs



W.A.No.643 of 2025

WEB COPY

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