



Writ Petition No.36935 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.36935 of 2024

and

W.M.P.No.39880 of 2024

Md.Kaleemullah
S/o.S.Abudul Azeez

... Petitioner

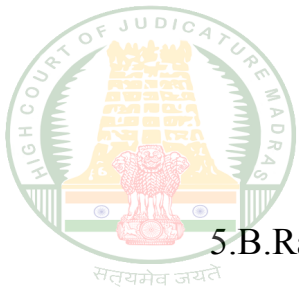
Vs.

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

2.The District Registrar,
Office of the District Registrar,
Central-Chennai,
184, Bharahi Salai,
Triplicane, Chennai - 600 005.

3.The Sub Registrar,
Purasawalkam,
Chennai - 600 007.

4.J.Banu
W/o.Jayashankar



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5.B.Rajesh

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6.P.Geetha Priya
W/o.Pandiyan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the third respondent to cancel the 1) Sale Deed dated 19.07.2021 registered as Document No.4090 of 2021 in the office of Sub Registrar, Purasawakkam and cancel the 2) Power of Attorney dated 26.03.2021 and registered as Document No.2110 of 2021 Book I, S.R.O. Purasawakkam.

For Petitioner : Ms.Vasudha Thiagarajan

For Respondents : Mr.B.Vijay,
Additional Government Pleader
[R1 to R3]
No appearance [R4]
Mr.K.Ezhumalai for Mr.K.Mohan
[R5 & R6]

ORDER

The issue involved in the present writ petition and the case of the petitioner was recorded in the earlier order dated 06.03.2025 and the same is extracted hereunder:

"This writ petition has been filed for the issue of writ of mandamus directing the 3rd respondent to cancel the sale deed dated 19.07.2021 registered as Document No.4090 of 2021 and also the power of attorney dated 26.03.2021, registered as Document No.2110 of 2021 on the file of the 3rd respondent.



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2. The case of the petitioner is that he entered into an agreement of sale deed dated 12.04.2011 with the 4th respondent and this agreement of sale was registered as Document No.1366 of 2011 on the file of the 3rd respondent. The total sale consideration was fixed as Rs.5,00,000/- and the petitioner paid an advance amount of Rs.2,00,000/- The balance sale consideration was agreed to be paid at the time of execution of the sale deed. Since the 4th respondent did not come forward to execute the sale deed, the petitioner filed O.S.No.7519 of 2012 before the XV Assistant City Civil Court, Chennai, praying for the relief of specific performance. The suit was decreed by judgment and decree dated 09.02.2017. Thereafter, since the 4th respondent did not come forward to execute the sale deed in favour of the petitioner, the petitioner filed E.P.No.3406 of 2017. Pursuant to the same, the sale deed came to be executed in favour of the petitioner by the X Assistant Judge, City Civil Court, Chennai, on 08.01.2020 and this sale deed was registered as Document No.655 of 2020 by the 3rd respondent. The further case of the petitioner is that E.P.No.648 of 2022 was filed for delivery of possession and the delivery was also effected in favour of the petitioner on 22.02.2023.

3. The grievance of the petitioner is that the 4th respondent in spite of having knowledge about the decree passed by the Civil Court and the sale deed executed in favour of the petitioner, proceeded to execute a power of attorney document dated 26.03.2021 in favour of the 5th respondent. By taking advantage of this document, the sale deed was executed by the 5th respondent in his capacity as an agent in favour of the 6th respondent on 19.07.2021, which document was registered on the file of the 3rd respondent as Document No.4090 of 2021.

4. The 4th respondent having conveyed the property, also filed I.A.No.1 of 2023 before the Court below and sought for payment out of a sum of Rs.7,44,062/- which was credited to the account of the petitioner which was the amount that was deposited by the petitioner towards the sale consideration and the interest thereof. The petitioner immediately filed a counter and opposed the payment out application on the ground that the 4th respondent has dealt with the same property and has sold the property in favour of the 6th respondent and by concealing this fact, the 4th respondent has also sought for payment out of the



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money that was deposited by the petitioner. It is stated that this I.A.No.1 of 2023 is pending before the concerned Court.

5. It is under these circumstances, the present writ petition came to be filed before this Court seeking for the cancellation of the power of attorney dated 26.03.2021 and sale deed dated 19.07.2021.

6. The 3rd respondent has filed a counter affidavit. The stand taken by the 3rd respondent is that the power of attorney document and the sale deed can be cancelled only in exercise of Section 77A of the Registration Act and this provision has been held to be unconstitutional by the Division Bench of this Court and therefore, the registering authority does not have any right or jurisdiction to cancel any registered document. Accordingly, the registering authority has taken a stand that the petitioner has to necessarily work out the remedy only before the competent Civil Court.

7. The learned counsel appearing on behalf of the respondents 5 & 6 seeks for some more time in this case.

8. Post this writ petition under the caption 'part heard cases' on 13.03.2025. It is made clear that no further adjournments will be granted in this case."

2. The sixth respondent filed a counter affidavit. The stand taken by the sixth respondent is extracted hereunder:

"[6] I state that the averments made in paragraph No.5 of the affidavit filed in support of the above writ petition with regard to delivery of vacant possession of the suit property through court on 22.02.2023, are not known to me. I state that I have purchased the said property after getting the certified copy of the encumbrance certificate dated 24.03.2021, vide No.ECA/Online/49616228/2021 for the period from 01.01.2017 to 24.03.2021 and in the said encumbrance certificate the execution of the sale deed dated 08.01.2020, registered as document No.655 of 2020 on the file of Sub Registrar,



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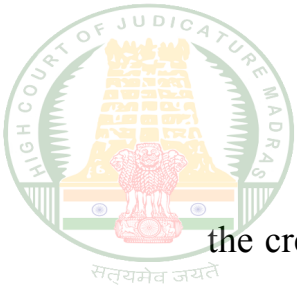


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Purasawalkam not reflecting and hence, Mr.Rajesh, the 5th respondent herein had obtained the power of attorney dated 26.03.2021, registered as document No.2110 of 2021 in the office of Sub Registrar, Purasawalkam and sold the same to me under a registered sale deed dated 19.07.2021, registered as document No.4090 of 2021 on the file of Sub Registrar, Purasawalkam for valuable sale consideration, as if the property is free from encumbrance."

3. The main ground urged by the learned counsel for the sixth respondent is that she was not a party in the suit and she had no knowledge about the earlier proceedings and nothing was reflected in the encumbrance certificate. Therefore, the sixth respondent is a bonafide purchaser for value and the sixth respondent has parted with a sum of Rs.6,75,000/- towards sale consideration.

4. In the considered view of this Court, the sixth respondent had purchased the property which was already sold in favour of the petitioner and the concept of bonafide purchaser cannot be applied in a case of this nature. Therefore, it is not possible to sustain the sale deed executed in favour of the sixth respondent and it has to be necessarily interfered with by this Court. Even in the earlier order passed on 06.03.2025, the learned counsel for the petitioner submitted that the balance sale consideration has already been deposited by the petitioner to



the credit of O.S.No.7519 of 2012 on the file of XV Assistant City Civil Court, Chennai. The fourth respondent, in spite of knowing about the decree passed, has chosen to conceal the same and had sold the property in favour of the sixth respondent. Therefore, whatever amount has been deposited by the petitioner towards the sale consideration can be permitted to be withdrawn by the sixth respondent. This will sufficiently take care of the grievance expressed by the sixth respondent.

5. In the light of the above discussion, the registration of the sale deed dated 19.07.2021 registered as document No.4090/2021 and the Power of Attorney dated 26.03.2021 registered as document No.2110/2021 on the file of the third respondent is hereby declared to be illegal and not valid. Accordingly, the third respondent shall take note of this order and cancel the entry made in the encumbrance certificate with respect to both these documents. The sixth respondent is permitted to file a payment out petition before the XV Assistant City Civil Court, Chennai, to withdraw the balance sale consideration that has been deposited by the petitioner. The petitioner shall give no objection for the same and the sixth respondent shall be permitted to withdraw the amount.



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In the result, this writ petition is allowed in the above terms.

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No costs. Consequently, connected miscellaneous petition is closed.

14.03.2025

Neutral Citation: Yes/No
Index: Yes/no
Speaking Order/Non-Speaking Order
gm

To

- 1.The Inspector General of Registration,
No.100, Santhome High Road,
Raja Annamalaipuram,
Chennai - 600 028.
- 2.The District Registrar,
Office of the District Registrar,
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Triplicane, Chennai - 600 005.
- 3.The Sub Registrar,
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Chennai - 600 007.



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N.ANAND VENKATESH, J

gm

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