



W.P.(MD)No.1244 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.02.2025

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.(MD) No.1244 of 2024

and

W.M.P.(MD).Nos.1274 and 1275 of 2024

Udhayam M.Rajendran

... Petitioner

VS.

1.The Deputy Inspector General Registration,
Tirunelveli Zone, Tirunelveli.

2.The District Registrar,
Office of the District Registrar,
Tenkasi District.

3.Kaja Saibudeen

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order in Na.Ka.No.800/Aa2/2022 dated 18.05.2022 passed by the 2nd respondent and the consequential order in Na.Ka.No. 3203/Vu/2022 dated 10.10.2023 passed by the 1st respondent and quash the same as illegal.

For Petitioner :Mr.M.Pozhilan



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For R1 & R2 :Mr.R.Suresh Kumar
Additional Government Pleader

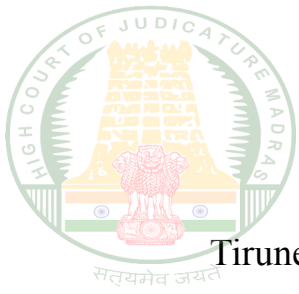
For R3 : Ms.H.Jasima Yasmin for
M/s.Ajmal Associates

ORDER

This Writ Petition challenges the proceedings of the respondents 1 and 2, dated 18.05.2022 and 10.10.2023 respectively. By the said proceedings, the purchase made by the writ petitioner with respect to the property situated at Melapalayam in S.No.42/2A to an extent of 36 cents has been declared to be fraudulent.

2. The petitioner claims to have purchased the property from one Ummul Kairi Salma Beevi in Doc.No.2513/2017 dated 19.06.2017 for a sum of Rs.9,00,000/-. This document comprises of another property, which the petitioner had purchased from Muhammed Nagutha Maraikayar, situated in S.No.103/1 of Alangudi Village.

3. The petitioner pleads that his vendor, Ummul Kairi Salma Beevi had acquired the property pursuant to the judgment and decree in O.S.No.8 of 1970 dated 05.07.1971 on the file of the Sub Court,

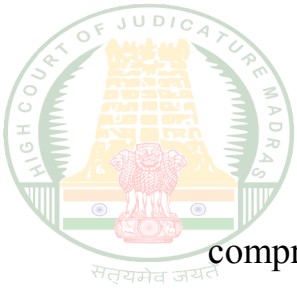


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Tirunelveli. He pleads, subsequently, a partition deed was entered into and this property was allotted to his vendor. On the basis of these documents, revenue records were also mutated in her favour.

4. The said Ummul Kairi Salma Beevi executed a registered deed of power of attorney in favour of one Ismail. It is through the said power of attorney that the petitioner claims he obtained the property on 19.06.2017.

5. The petitioner pleads that he was attempting to grade the land. At that time, the third respondent pleaded that he is the owner of the property. He claimed he had purchased the same from one Sahul Hameed. According to him, Sahul Hameed had acquired the property by way of a registered document in Document No.2351/1996. As disputes arose between Sahul Hameed and Ummul Kairi Salma Beevi, a suit was presented in O.S.No.693 of 1999 before the Principal District Munsif Court at Tirunelveli. The suit was compromised. Under the compromise, it was stated that Ummul Kairi Salma Beevi would receive a sum of Rs.3,90,000/- and in consequence thereof, a decree for declaration that Sahul Hameed is the owner of the property would ensue. After the



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compromise had been effected, Sahul Hameed executed a sale deed in favour of one Chidambaramanickam. In turn, Chidambaramanickam executed a sale deed in favour of the third respondent.

6. The petitioner pleaded that the compromise decree dated 16.06.2000 recorded by the Principal District Munsif Court is invalid, as Ummul Kairi Salma Beevi never received the suit summons or the notice in the case. He further pleads that she was not examined in the suit and that no monetary consideration of Rs.3,90,000/- was ever received from Sahul Hameed. It was urged that Ummul Kairi Salma Beevi challenged the compromise decree by way of E.A.No.583 of 2015 in O.S.No.693 of 1999. When the Writ Petition was filed, the same was pending.

7. This property was the subject matter of another suit in O.S.No. 337 of 2016 before the Principal District Munsif Court at Tirunelveli, at the instance of one Ramaiah and M.Durai. They pleaded that Ummul Kairi Salma Beevi had executed a registered sale deed in their favour and hence, they have title to the same. This suit was dismissed on 23.10.2019, holding that the document executed in favour of the plaintiffs in that case is a fraudulent one.



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8. The genesis of this Writ Petition is that the third respondent filed an application before the second respondent seeking cancellation of the registered sale deed executed in favour of the writ petitioner in Document No.2513/2017, alleging that it is a fraudulent one.

9. Exercising the power under Section 68(2) of the Registration Act, the second respondent also declared that the document is a fraudulent one. Aggrieved by the same, the writ petitioner preferred an appeal to the first respondent. The first respondent too upheld the order passed by the second respondent vide his order dated 10.10.2023 and declared that the document is violative of Sections 28 and 22-B(2) of the Registration Act. Challenging the same, the present Writ Petition.

10. This Court entertained the Writ Petition and notice was ordered to the respondents on 22.01.2024. The third respondent has entered appearance through Ms.H.Jasima Yasmin.

11. Ms.Jasima Yasmin submitted that on 29.07.1996, Sahul Hameed purchased the property from one A.Hameed Mohammed and others. He had instituted a suit in O.S.No.693 of 1999 against Ummul

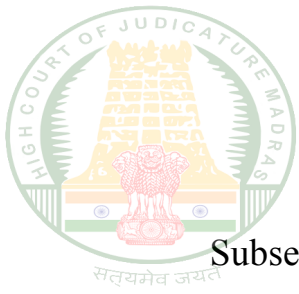


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Kairi Salma Beevi. On 16.07.2000, a compromise decree was entered into between the parties and Ummul Kairi Salma Beevi had endorsed that she had received a sum of Rs.3,90,000/-, giving up her right over the property. Subsequently, the decree holder, Sahul Hameed and his wife, Shakeena mortgaged the property to M/s.Bank of India for a term loan of Rs.10,00,000/-. As they defaulted in payment of the said amount, the Bank of India invoked SARFAESI proceedings and issued a notice under Section 13(2) on 01.12.2004. The Bank subsequently brought the property for auction and it was purchased by one Chidambara Manickam on 19.10.2005. A sale certificate too was issued in favour of Chidambara Manickam on 06.01.2006.

12. She urges that the action of Bank of India was challenged by Sahul Hammed and his wife before this Court in W.P.(MD).No.634 of 2006 and W.P.(MD).No.635 of 2006. The Writ Petitions were allowed on 09.03.2007. Appeals were preferred to a Division Bench. The appeals had been received by this Court as W.A.(MD).Nos.145 of 2007 and 146 of 2007. The Division Bench of this Court allowed the appeals and dismissed the Writ Petitions filed by the said persons on 10.08.2007.



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Subsequently, physical possession was taken by the Bank and handed over to the purchaser on 18.09.2007. She points out, soon thereafter, the auction purchaser, Chidambara Manickam, sold the property to the third respondent by way of a registered sale deed in Document No.7221/2007 on the file of the Sub Registrar, Melapalayam, the consideration for the purchase being Rs.50,19,000/-.

13. Ms.Jasima Yasmin urges that eight years thereafter, Ummul Kairi Salma Beevi filed a petition under Section 47 of Code of Civil Procedure in E.A.No.583/2015 questioning the compromise deed. Pending the litigation, Ummul Kairi Salma Beevi had executed a sale deed in respect of the property in favour of the writ petitioner receiving a poultry sum of Rs.9,00,000/-. She points out that even in the year 2007, the amount that the third respondent had purchased the property is Rs.50,00,000/- and a decade thereafter, the same could not have been alienated for Rs.9,00,000/-. She adds that the petitioner had deliberately included another property situated within the jurisdiction of the Sub Registrar at Alangulam and had obtained a sale deed for this property also.



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14. She further points out that Sahul Hameed and Shakeena had preferred Special Leave Petitions to the Supreme Court against the order passed by this Court in W.A.(MD).Nos.145 and 146 of 2007 dated 10.08.2007. The Supreme Court dismissed the appeals on 20.08.2019. She states that pending the proceedings in E.A.No.583 of 2015, the vendor of the petitioner, Ummul Kairi Salma Beevi passed away on 12.03.2020. The writ petitioner had brought himself on record, as the legal representative of his deceased vendor, by filing an application before the Executing Court.

15. She states that the actions of the Ummul Kairi Salma Beevi and that of the writ petitioner is fraudulent and the same had rightly been interfered with by the second respondent and confirmed by the first respondent. She states that the impugned proceedings had been issued prior to coming into force of the amendments to the Registration Act including Section 77A and that the orders were passed on the basis of the Circulars and departmental instructions, that were in force during the relevant time.



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16. Finally, she produced the order passed by the learned Principal District Munsif at Tirunelveli in E.A.No.583/2015 dated 04.01.2025, pointing out that the application filed under Section 47 had been dismissed by the Court on that day. Hence, she prays that the Writ Petition may be dismissed with costs.

17. Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents 1 and 2 states that the amendment brought to Section 77A had been declared as unconstitutional by the Division Bench of this Court. He invites my attention to the judgment in ***M.Kathirvel Vs. Inspector General of Registration and others, 2024 (4) CTC 769.***

18. Referring to the very same judgment, Mr.M.Pozhilan pleads that the respondents 1 and 2 have no jurisdiction or power to cancel a document invoking Section 77A and pleads that the Writ Petition may be allowed.

19. I have carefully considered the submissions of both sides. I have gone through the records.



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20. The narration of the facts shows that the third respondent herein had filed an application before the District Registrar, Tenkasi/ second respondent herein seeking cancellation of the sale deed in favour of the writ petitioner. The sale deed is a registered document in Document No.2513/2017. It is alleged to have been fraudulently registered in his favour. The second respondent purported to have exercised the power under Section 68(2) of the Registration Act and has declared the registered sale deed to be a fraudulently registered document. Instead of challenging the order by way of a Writ Petition, the writ petitioner preferred an appeal before the first respondent by invoking Section 69 of the Registration Act. The first respondent too upheld the order passed by the second respondent. He has stated that the registration is contrary to Sections 22-B(2) and 28 of the Registration Act.

21. Though arguments are advanced as if Section 77A of the Registration Act had been invoked by the authorities, a perusal of the impugned order shows what has been exercised is only Section 68.



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22. Insofar as Section 77A is concerned, the learned counsel for the petitioner is correct that a Division Bench of this Court in ***M.Kathirvel Vs. Inspector General of Registration and others, 2024 (5) CTC 769***, has declared Section 77A to be unconstitutional.

23. Apart from that, a perusal of the Registration Act shows that Section 68 falls under Part XI of the Act. This Part is divided into further sub-chapters.

(i) Sections 51 to 57 deal with the register books and indexes to be kept in the office of the Sub Registrar.

(ii) As to what is the procedure that should be followed while admitting a document is covered by Sections 58 to 63.

(iii) The special duties to be performed by a Sub Registrar are set forth under Sections 64, 64-A and 65.

(iv) The duties of a Registrar are found under Sections 66 and 67.

(v) Sections 68 to 70 deal with controlling powers of the Registrar and Inspector General of Registration.

These are superintending powers available to the Administrative Superiors of a Sub Registrar. The Registrar has the power to rectify any

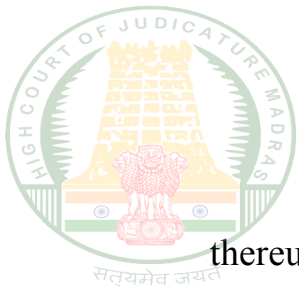


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error regarding the book or the office in which the document is registered. Yet, it continues to be in the realm of administrative power. It cannot be expanded to include a power to cancel registration of a document already registered.

24. This issue is no longer *res integra*. The Supreme Court was called upon to decide this issue in ***Sathya Pal Anand Vs. State of Madhya Pradesh and others, (2016) 10 SCC 767***. The Supreme Court declared that once a document is registered, it is not open to any authority under the Act to cancel the registration. Once the document is registered, the role of a Sub Registrar stands discharged. The fact whether the document was properly presented for registration, cannot be re-opened by the superior after its registration. It also found that the power to cancel registration is a substantive power. This power is available with the Civil Court, while granting a decree for declaration that the document, is hit by anyone of the substantive laws.

25. Similarly, the power of the Inspector General of Registration is limited to do superintendence of registration offices and to make rules

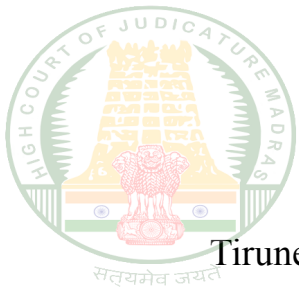


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thereunder. Even the highest authority under the Registration Act does not have the power to cancel the registration of a document already registered. In fact, the Registrar in exercise of the powers under this Section cannot direct a Sub Registrar not to register a document presented for registration, if the document, otherwise complies with all the statutory requirements and formalities under the Act. The power under Section 68 is only to enable the Registrar to give directions with respect to his ministerial functions and duties. In fine, it is only administrative and not quasi-judicial.

26. If the aforesaid paragraph is the position of law, then a direction to cancel the registration is wholly beyond the scope of Section 68 and Section 69 of the Registration Act.

27. In the light of the above discussion, I am constrained to interfere with the orders passed by the first and second respondents. The impugned orders are quashed. Since the registration of the document in favour of the petitioner was pending the application in E.A.No.583 of 2015 in O.S.No.693 of 1999 on the file of the Principal District Munsif at



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Tirunelveli, the registration will be subject to the result of the said Execution Petition.

28. Needless to add, *lis pendens* commences from the date of presentation of the plaint and stops only with final orders passed in the Execution Petition. Ms.Jasima Yasmin urged that E.A.No.583 of 2015 in O.S.No.693 of 1999 came to be dismissed by the Executing Court on 04.01.2025. A party is always entitled to take such legal remedies, as is open to her/him, to get rid of an order passed against her/him. Therefore, suffice it to hold the document will be subject to the result of the proceedings initiated by the writ petitioner challenging the order dated 04.01.2025.

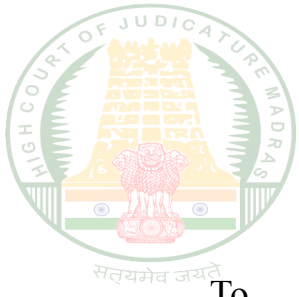
29. With the above observation, the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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

07.02.2025

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To
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- 1.The Deputy Inspector General Registration,
Tirunelveli Zone, Tirunelveli.
- 2.The District Registrar,
Office of the District Registrar,
Tenkasi District.



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V. LAKSHMINARAYANAN, J.

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