

W.A(MD)No.112 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.06.2024

Pronounced on : 06.01.2025

CORAM :

JUSTICE N.SESHASAYEE
and
JUSTICE L.VICTORIA GOWRI

W.A(MD)No.112 of 2019
and
C.M.P(MD)No.819 of 2019

K.Ratnam

...Appellant/Petitioner

Vs.

1.The District Registrar,
Office of the District Registrar,
Kokirakulam, Palayamkottai,
Tirunelveli – 627 009.

2.The Sub Registrar,
Melapalayam,
Tirunelveli – 627 005.

3.Jayalakshmi

4.Muthuselvi

5.Gunaseelan

6.C.Palavesam @ Balu

...Respondents/Respondents



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PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent as against the order passed by this Court dated 07.12.2018 in W.P(MD)No.9633 of 2018.

For Appellants : Mr.G.Prabhu Rajadurai
For Respondents 1 & 2 : Mrs.D.Farjana Khouisiya
Special Government Pleader
For Respondents 5 & 6 : Mr.G.Thalaimutharasu

JUDGMENT

[Judgment was delivered by **L.VICTORIA GOWRI, J.**]

This writ appeal is directed against an order of the learned Single Judge dated 07.12.2018 dismissing W.P(MD)No.9633 of 2018.

2.The parties would be referred to by their rank before the learned Single Judge.

2.1.The writ petitioner had invited an adverse order from the District Registrar on an application made by him for cancellation of certain registered documents.

The writ petition was filed challenging the said order.

2.2.The learned Single Judge had held that the writ petitioner had established the cause of action but proceeded to hold that he might not be entitled to the remedy in law.

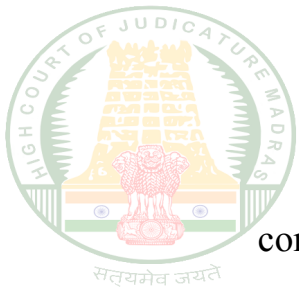


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2.3. The facts that lead up to the filing of the writ petition may be summarized and this Court hastened to add a cautioning statement that it shocks and chills the conscience of this Court.

- The writ petitioner certain Rathnam had purchased a block of 3.31 acres in several survey numbers under several sale deeds, all which, lie contiguously between 1982 and 2000. Sale deeds were obtained *inter alia* in the names of certain Vahitha Devi and Krishnaveni, the daughters of the petitioner.
- According to the petitioner, this block of 3.31 acres was enclosed by a compound wall along with its boundaries wherein he had put up Hallow Brick Manufacturing Unit plus quarters for the employees of the Unit and two bungalows besides other constructions.
- The properties which the petitioner had earlier purchased in the name of his daughter Vahitha Devi was comprised in Survey No.1000/4B and the property purchased in the name of Krishna Veni was comprised in Survey No.1000/1B (Part) of Kulavanigapuram village. These properties were



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correlated to T.S.Nos.140 and 141. While so on 21.05.2010, both the daughters of the petitioner had executed separate settlement deeds in favour of the petitioner as regards part of the property that were purchased in their respective names. While Vahitha Devi had settled the entire property that was purchased in her name, Krishnaveni had settled 29.5 cents in favour of the petitioner. Part of the constructions referred to earlier is also situated in the property covered by the settlement deeds of Vahitha Devi and Krishnaveni.

2.4 The life was peaceful to the octogenarian petitioner till 14.12.2015 and that was the date when a bunch of hooligans engaged in a conspiracy to abuse the judicial process of the Court. These facts are now unfold.

- Certain Mohanan instituted a suit in O.S.No.126 of 2015 before the Additional District Court, Tirunelveli for partition against one Jeyalakshmi, who is the third respondent herein, for partition of two items of properties comprised in in Survey No.1000/D, 1000/4 and 1000/1B. On 17.12.2015, the suit was numbered. On 28.01.2016, the third respondent entered appearance and filed a settlement agreeing for partition. The matter then stood over to 11.02.2016 and a memo came to



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be filed before the District Court based on which, the learned District Judge passed a decree for partition. A decree came to be passed and surprisingly it was not a partition decree for $\frac{1}{2}$ share but a decree conferring the entire suit property in favour of the third respondent Jeyalakshmi.

- About a year and a half thereafter, on 13.10.2017, the third respondent Jeyalakshmi had executed a deed of settlement in favour of her daughter, who is arrayed in this proceedings as the fourth respondent and this settlement deed deals with the property in Survey Nos.1000/1B and 1000/4. Contemporaneously, the fourth respondent had executed a power of attorney in favour of the fifth respondent, authorizing the latter even to sell the properties that are covered by the settlement deed and almost instantaneously the fifth respondent chose to execute a sale agreement for the aforesaid property in favour of the sixth respondent and all the three documents are successively registered by the Sub-Registrar, Melapalayam Sub-Registrar Office.
- Given the common experience of our citizens to which this Court is only familiar, the entire registration process appears to have been bogus.



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There now arose one sledge in giving effect to the settlement deed which the third respondent had executed in favour of the fourth respondent and it relates to the property comprised in Survey No.1000/B.

- As mentioned earlier, the property which Vahitha Devi had purchased was in Survey No.1000/4B whereas the property scheduled-II in the plaint in O.S.No.126 of 2015 did not include it. What was included in the suit and shown as one of the suit properties is the property in Survey No.1000/D. Now, unless this survey number is corrected in the manner known to law then, it would be difficult for those who want to deal with the property in Survey No.1000/B in terms of the decree passed in O.S.No.126 of 2015.
- The third respondent herein invented a novel method which the law does not countenance or approve. She makes arrangements to see that the plaint is corrected dubiously without the knowledge of the Court obviously with the connivance of some Court staff at the District Court, Tirunelveli. The plaint was corrected without a formal order of the Court by the third respondent through his counsel. Thereafter, the third respondent with utmost pretension of innocence had filed I.A.No.256 of



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2017 to correct the decree to include Survey No.1000/1B. The District Judge had allowed I.A.No.256 of 2017 and permitted correction of decree passed in O.S.No.126 of 2015 to include the property in Survey No.1000/1B. The stage is now well set to give for these private respondents. Sometime in the first week of November, 2017, they had visited the properties of the petitioner which to repeat a total extent of 3.31 acres lies contiguously without demarcation in the survey fields and tried to measure the property and take peaceful possession. The petitioner managed to stop the attempt and rushed to make necessary entries and during the enquiry that he made, the facts stated above in the previous paragraphs were unearthed by him from the records of the Court. In the meantime, the third respondent had approached the Tahsildar for grant of patta and on 22.11.2017, the Tahsildar had rejected the same upon he received objection to the same.

- Wasting no time, the petitioner approached this Court with C.R.P(MD)No.2202 of 2017 to strike off the plaint as well as the decree in O.S.No.126 of 2015, wherein this Court passed an order of interim stay, staying the operation of the decree passed in O.S.No.126 of 2015 on 24.11.2017.



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- The petitioner thereafter approached the Principal District Court, Tirunelveli with his complaint. This was prosecuted by the learned Principal District Judge to the concerned Additional District Court which passed the decree. On receipt, the Additional District Judge, received the same in I.A.No.303 of 2017.
- The learned Additional District Judge embarked upon to hold an enquiry into the complaint with utmost seriousness. He recorded the statement of the learned counsel for the plaintiff as well as the third respondent who are parties to O.S.No.126 of 2015 and also took efforts to obtain a forensic handwriting expert report that the correction made in the plaint and the Will, dated 05.12.1978 which form the foundation for the cause of action in the suit.
- The learned District Judge received a shocking report from the handwriting expert which exposed the fraud in the case. The report says that the Will was executed in a stamp paper purchased in Kanniyakumari District. The original contents were all erased with a chemical and the original handwriting however could be detected through a forensic



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examination through a process familiar to forensic examination and that, the Will was prepared on the said paper and it proceeded to state that the handwriting in the Will and the correction made in the plaint were in the same handwriting.

- The District Judge then proceeded to ascertain the truth by perusing the suit register as well as the schedule of property in the application filed by the plaintiff for grant of injunction in O.S.No.126 of 2015 and they did not show any correction vis-a-vis Survey No.1000/1B.
- The learned District Judge also found that the entire suit was a well organized collusive suit with the learned counsel for the plaintiff arranging the learned counsel for the third respondent and he had a little hesitation to hold that the decree obtained by playing fraud on the Court and recalled the decree suo motu. This Court records its appreciation for the efforts taken by the learned District Judge exhibited in unearthing the truth behind the complaint and wasting no time, he initiated proceedings under Section 340 of Cr.P.C.
- It is very unfortunate that the concerned Magistrate Court before which



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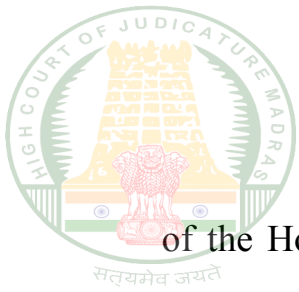
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this matter is pending shows little anxiety to proceed with the said complaint registered under Section 340 of Cr.P.C., and this Court understands the Court's hesitation is essentially because the complaint includes couple of lawyers from the local bar association.

2.5. While the learned District Judge had recalled the decree, this Court in its final order in C.R.P.No.2202 of 2017 proceeded to strike off the plaint in O.S.No.126 of 2015.

2.6. It is in these settings, the writ petitioner had approached the District Registrar with his complaint/application to cancel the settlement deed executed by the third respondent, the power of attorney executed by the fourth respondent and the sale agreement which the fifth respondent had executed in favour of the sixth respondent, of which to repeat were executed on 13.10.2017. The District Registrar however rejected it. This order as outlined in the opening paragraph was challenged by the petitioner before the learned Single Judge.

2.7. The learned Single Judge appreciated the case of the petitioner to defend his right over his property from the land grabbers but chose not to grant the remedy to the writ petitioner, since the Court felt that in terms of the authority



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of the Hon'ble Supreme Court in *Satyapaul's* case. This order is now under challenge.

2.8. When hearing upon, the learned counsel for the respondents made a statement that they do not have any instructions from his clients. This Court records the same. After all, no faultier will have the courage to step into the Court to defend the fraud that was played on the judicial process of the Court.

2.9. Mr.G.Prabhu Rajadurai, learned counsel counsel appearing for the appellant would submit that the Court may not direct the cancellation of the documents on the fraud played on the right of the appellant on certain executance of documents but still has powers to direct the cancellation if the registering authorities have violated any of the statutory provisions while registering the documents. In other words, he shifts the focus from his allegations of fraud played by the executents of the documents to dereliction of duty or negligence on the part of the registering authority for accomplishing the intended parties behind the writ petition.

3.The learned counsel appearing for the appellant further contended that on the complaint of the appellant, the learned 1st Additional District Judge,

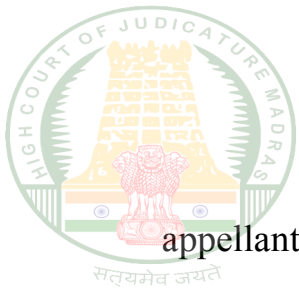


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Tirunelveli, by order dated 11.12.2017, *suo motu* reviewed the decree dated

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11.02.2016 in O.S.No.126 of 2015 and had set aside the same. In the interregnum, the 3rd respondent, that is, Jayalakshmi, executed a gift deed on 13.10.2017, in favour of the 4th respondent, Muthuselvi, bearing document No. 4988 of 2017. The 4th respondent in turn, on the same day, that is, on 13.10.2017 itself, executed a power of attorney bearing document No.4989 of 2017 with respect to the subject property in favour of the 5th respondent, namely, Gunaseelan. The said Gunaseelan, on the same day, that is, on 13.10.2017, executed an agreement for sale with respect to the subject property in favour of the 6th respondent, namely, C.Pallavesan @ Babu bearing document No.4990 of 2017. He insisted that, it is interesting to understand that the 4th respondent Muthuselvi, while executing a power of attorney in favour of Gunaseelan, was very much available in the said place and instead of executing a power of attorney, she herself could have very well executed an agreement for sale in favour of the 6th respondent. Under such circumstances, the appellant made a representation to the 1st respondent, in which the 1st respondent, by impugned order dated 21.12.2017, refused to cancel the aforesaid fraudulently registered documents, by intimating that, in view of the withdrawal of the Circular of the Inspector General of Registration, Chennai, bearing Moo.Mu.No.36079/U4/2017, dated 28.08.2017, the representation of the



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appellant cannot be considered and acted upon. The learned counsel for the

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appellant categorically submitted that whenever a representation is made to a statutory authority, there is a duty cast upon the authority to consider the same on its own merit and pass appropriate orders with proper reasoning. However, in the instant case, the petitioner's representation came to be rejected by the 1st respondent by means of a cryptic order without any appreciation of the disputed facts and other legal issues involved in the matter and as such the learned counsel contended that, the 1st respondent had failed to execute the statutory duty, which is cast upon him, while considering the representation made by the appellant and pressed for setting aside the said impugned order and further direct the 1st respondent to cancel the gift deed bearing document No.4988 of 2017, power of attorney bearing document No.4989 of 2017 and agreement for sale bearing document No.4990 of 2017 dated 13.10.2017 respectively and pressed for allowing the Writ Appeals.

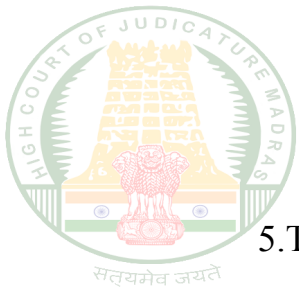
4.The learned Special Government Pleader for the respondents 1 and 2 submitted that, the Inspector General of Registration had issued a Circular, which was subsequently withdrawn by the Inspector General of Registration, in his Proceedings No.41530/U1/2017, dated 20.10.2017. He further submitted that there is no provision in the Registration Act, 1908, which enables any



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Officer of the Registration Department to cancel the registration of a document.

He further insisted that the Inspector General of Registration, Chennai, in his Letter No.6/IGR/2013, dated 30.01.2013, has issued instructions to all the registering Officers that the Circular No.67 dated 03.11.2011, was already withdrawn. So, the only way out for the registering officer whenever an offence under the Registration Act, 1908, was brought to his notice, is only to launch a criminal prosecution under Section 83 of the Registration Act, 1908. Hence, an enquiry regarding fraudulent registration will be conducted by the District Registrar and after completion of enquiry, prosecution will be launched by the registering officer. However, the prayer of the appellant regarding the cancellation of registration of document is not supported by any provisions in Registration Act or any other Act. In fact, there is no provision at all in the Registration Act to support the claim of the appellant. He categorically insisted that, as and when the appellant came to know about the fraudulent registration of document, he ought to have approached the appropriate Civil Court seeking the remedy of declaring the said fraudulently registered documents as null and void. Instead, he has approached this Court without availing the civil remedy, which is available to him. On that grounds, the learned Special Government Pleader pressed for dismissing the Writ Appeal.

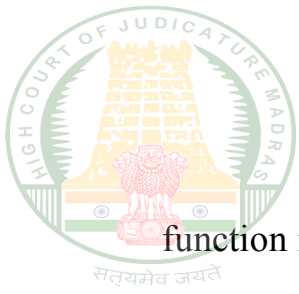


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5.The learned counsel appearing for the respondents 3 and 4 has filed a counter on 19.06.2024, however reported no instructions from the respondents 3 and 4 on the basis of a letter along with acknowledgement card, which he had sent to his clients.

6.Heard the learned counsel for the appellant, the learned Special Government Pleader for the respondents 1 and 2, the learned counsel for the respondents 5 and 6 and anxiously considered the various records placed before us.

7.The learned Single Judge on examining Part VI of the Registration Act, 1908, which provides under Section 32, the persons to present documents for registration, Section 33 of the Registration Act, 1908, which provides the manner in which the power of attorney is recognisable for the purpose of presenting the document under Section 32 and Sections 34 and 35, which provides for enquiry before registration by the registering officer before registering any instrument came to a conclusion that, when a document is presented before the registering officer, the registering officer is not conferred with any judicial power nor quasi judicial power. Further the learned Single Judge observed that the registering Officer is exercising only an administrative



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function not a Judicial function. Further the learned Single Judge observed that

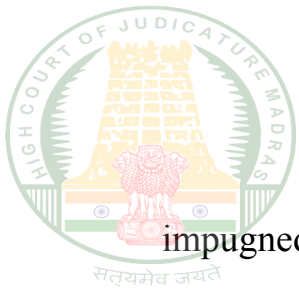
Sections 30 to 35 of the Registration Act, 1908, do not empower the registering Officer to exercise judicial power by evaluating the title of the executors who present the document for registering and the fraud committed by the executors of any document, which is submitted for registration and the same will come to the knowledge of the registering Officer only when the affected person approaches the registering Officer or when a double document presented comes to the knowledge of the registering Officer. Observing that it is categorically clear from the contention made by the rival submissions made by the parties that certain documents came to be registered by the respondents 3, 4 and 5 as document Nos.4988, 4989 and 4990 of 2017, based on the decree passed by the learned Additional District Judge, Tirunelveli, in O.S.No.126 of 2015 on 11.02.2016. Further, the learned Single Judge observed that though the said decree came to be set aside *suo motu* by the learned Trial Court, later on 11.12.2017, when the documents were presented and executed on 13.10.2017 by the respondents 3, 4 and 5, the judgment and decree in O.S.No.126 of 2015 dated 11.02.2016 stood good and valid and hence, the first respondent registering officer cannot be compelled to exercise the function, which is not conferred to him under this statute. Thereby, the learned Single Judge concluded that setting aside an instrument presented before the registering



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officer is a judicial function, which cannot be exercised by the registering officer and it can be done only by a Civil Court on appreciation of facts and laws. The learned Single Judge further held that even if the document is fraudulently executed though apparently known after execution, the same when challenged before this Court, this Court cannot exercise the judicial function by setting aside the document as void. However, the learned Single Judge left it open to the respective parties to approach the appropriate forum for the redressal of the dispute. Challenging the aforesaid order, the appellant is before us.

8.The appellant's representation dated 18.12.2017, requiring the first respondent to cancel the settlement deed bearing document No.4988 of 2017, the general power of attorney bearing document No.4989 of 2017 and the agreement for sale bearing document No.4990 of 2017 of Melapalayam Sub-Registry, came to be rejected by the impugned cryptic order passed by the first respondent in Na.Ka.No.7021/A3/2017 dated 21.12.2017, informing inability to act upon the same in view of the withdrawal of the Circular issued by the Inspector General of Registration, Chennai, bearing Moo.Mu.No. 36079/U4/2017 dated 28.08.2017. The said exercise was done by the first respondent by returning the representation back to the appellant along with the



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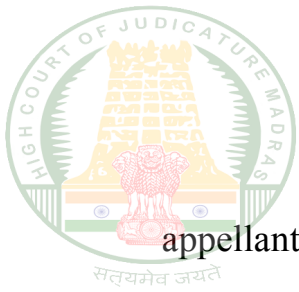
impugned order. The same was tested by the learned Single Judge and concluded that the impugned order passed by the first respondent cannot be interfered with, for the reason that setting aside an instrument presented before the registration officer is a judicial function, which cannot be exercised by the registering officer and it can be done only by a Civil Court on appreciation of facts and law. The subject matter of the present Writ Appeal are the lands, which were originally in Survey No.1000/1B and Survey No.1000/4 and subsequently, which were given Town Survey Nos.140 and 141 during Town Survey. A suit for partition in O.S.No.126 of 2015 was filed before the First Additional District Court, Tirunelveli, by one Mohanan with respect to the suit scheduled properties comprised in Survey No.1000/D and 1000/4 as against the third respondent on 14.12.2015, which was numbered on 17.12.2015, following which, the third respondent herein filed a written statement agreeing for partition on 20.01.2016, claiming her title based on a Will executed by one Nainar Asari as early as on 05.12.1978, in favour of the said Mohanan and the third respondent, namely, Jayalakshmi. On the basis of the collusive submissions made by the said Mohanan and the third respondent, the suit was decreed as prayed for on 11.02.2016. Only on the strength of the said judgment and decree, later the third respondent executed a settlement deed in favour of the fourth respondent with respect to the property in Survey No.1000/1B and



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Survey No.1000/4 and registered the same in document No.4988 of 2017 on the file of the Melapalayam Sub Registry. On the same day, the fourth respondent executed a power of attorney with respect to the said property in favour of the fifth respondent in document No.4989 of 2017 and the fifth respondent in turn executed an agreement for sale in favour of the sixth respondent by document No.4990 of 2017.

9.It is interesting to note that, the said Survey No.1000/1B was neither mentioned in the plaint nor in the decree dated 11.02.2016 passed by the learned First Additional District Judge, at Tirunelveli, in O.S.No.126 of 2015. Only thereafter, on 23.10.2017, the third respondent filed an amendment Application in I.A.No.256 of 2017 in O.S.No.126 of 2015 to include the Survey No.1000/1B in the decree passed in the said suit. Later, the said amendment Application was allowed and Survey No.1000/1B was included in the decree dated 11.02.2016, on 27.10.2017. It has become clear that though originally Survey No.1000/1B was not mentioned in the plaint, the amendment Application was allowed on the premise that the said Survey Number was left out in the decree due to inadvertency only because of the fact that the respondents have corrected the plaint by forging the Court records and have included Survey No.1000/1B fraudulently. On finding out the same, the



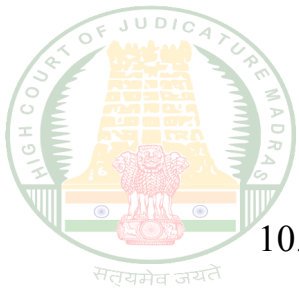
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appellant filed a Civil Revision Petition before this Court in C.R.P.(MD)No.

2202 of 2017 to strike off the plaint in O.S.No.126 of 2015 and the consequent decree in the said suit on 19.11.2017. This Court, by its order dated 20.09.2018, had passed an order to strike off the plaint in O.S.No.126 of 2015 and the relevant portion of the same is extracted as follows:-

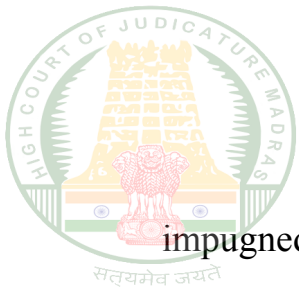
“4.The learned counsel for the petitioner produced a copy of the order dated 11.12.2017, passed by the learned Trial Judge suo motu reviewing and recalling the order dated 11.02.2016. It is an elaborate order passed after examining the counsel on either side. Finding has been given that fraud was played on the court. It is admitted by the respondents that this order has not been questioned till date. It has thus become final. If the plaintiff has been found to have played fraud on the court, the court below ought to have non suited him then and there. The question of restoring the suit to its file does not arise. The learned Trial Judge should not have stopped with recalling the decree alone. He should have gone further and throw out the plaint itself.

5.The reasons given by the court below in the order dated 11.12.2017 in O.S.No.126 of 2015 are detailed and sound. For those very reasons, this Court directs the Court below to strike off the plaint in O.S.No.126 of 2015. Accordingly, this civil revision petition is allowed.”



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10. That apart, while *suo motu* reviewing the judgment and decree passed by the learned Trial Court based on the collusive compromise entered into between the parties to the suit in O.S.No.126 of 2015, the learned Trial Court concluded that, Survey No.1000/1B was inserted subsequently after the passing of the decree by the learned Trial Court on 11.02.2016. Finally, on 11.12.2017, the learned Additional District Judge had set aside the collusive decree, after conducting enquiry with the plaintiff and the defendant and examining the advocates on record and thereafter, restored the suit on file and entertained the appellant's complaint as a petition under Section 340 of Cr.P.C., and the same was renumbered as M.J.C.No.1 of 2017. Further, the forged Will and fraudulently corrected plaint in the Court record was sent for the expert opinion of the Forensic Department. On 05.03.2018, the expert gave a report stating that, the words in the stamp paper in the Will was chemically erased. Further, the handwriting in the forged Will and the handwriting in the correction made in the original plaint, after the decree was made by the same person. Only in these circumstances, the appellant had made an Application to the first respondent, seeking to cancel the documents, which was registered by the respondents 3, 4 and 5 in Melapalayam Sub Registry, which was fraudulently obtained by a collusive decree, by the third respondent and one Mohanan. However, the first respondent has rejected the said Application, by the

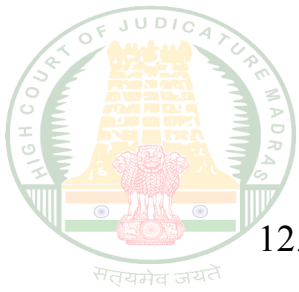


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impugned order dated 21.12.2017.

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11.The learned counsel for the appellant relying upon the case of ***Sanjeev Kumar Mittal versus State*** reported in ***2011 (121) DRJ 328***, the submitted that, based on the forged Will, the third respondent and the said Mohanan have filed their affidavits with false contentions. Relying upon the judgment passed by the Hon'ble Delhi High Court in the aforesaid case, the learned counsel submitted that swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings, but has also the tendency to impede and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any Court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or abstract the free flow of the unsoiled stream of justice by resorting to the filing of false evidence commits criminal contempt of Court and renders himself liable to be dealt with in accordance with the Act.



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12. In view of the said submission made by the learned counsel for the appellant, it is pertinent to mention here that the appellant's complaint under Section 340 of Cr.P.C., is still pending as M.J.C.No.1 of 2017 before the learned Trial Court for final adjudication. Despite the establishment of fraud and deceit by the third respondent and one Mohanan, in obtaining a collusive decree in O.S.No.126 of 2017, the appellant could not succeed before the learned Single Judge for the reason that the learned Single Judge concluded that the first respondent registering authority/registering Officer is not conferred with any judicial power nor quasi judicial power under Sections 30 to 35 of the Registration Act, 1908. Facilitating him to cancel the registration effected by him, the learned Single Judge further directed the appellant to approach the appropriate forum for the redressal of his claim.

13. The contention of the appellants is that, the execution and registration of the documents are the consequence of various acts of fraud and forgery and that since the registration was done in violation of the provisions of the Patta Passbook Act, 1983, and without the verification of the nature of the property, the entire registration itself is void and hence, the same can be nullified by the first respondent. That apart, the contention of the appellant is that, no enquiry with reference to title is required as the decree is set aside as fraudulent decree



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and the issue involved is not akin to registration of document with disputed title, but registration on playing fraud. We have taken note of the fact that, Section 5 of the Tamil Nadu Patta Passbook Act, 1983, mandates that no document relating to transfer of any land by sale, gift, mortgage, exchange, settlement or otherwise shall be registered by the registering authority unless the Patta Passbook relating to such land is produced before such registering authority. However, in the instant case, even without production of the Patta Passbook with respect to the subject property which was sought to be settled by the third respondent in favour of the fifth respondent, the first respondent had facilitated the registration of the settlement deed by the registration and execution of the settlement deed by the third respondent in favour of the fifth respondent.

14.The point to be determined in this case is that, whether the first respondent registering authority, by refusing to consider the representation made by the appellant to cancel 3 documents, which had emanated from the fraudulently obtained judgment and decree of the learned First Additional District Judge, at Tirunelveli, in O.S.No.126 of 2017, which was later set aside as a fraudulent decree on *suo motu* Review by the learned Trial Court has failed to perform his statutory duties?



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15.The Honble Apex Court in the case of ***Satyapal Anand versus State of Madhya Pradesh and Others*** reported in ***2016 10 SCC 767***, in a similar matter has held that, *registering Officer is not a quasi judicial authority. The Hon'ble Apex Court further held that Section 35 of the Act does not confer a quasi judicial power on the registering authority. The registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental to ascertain that there is no violation of Provisions of the Act of 1908. In the case of ***Park View Enterprises***, it has been observed that the function of the registering Officer is purely administrative and not quasi judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument.*

16.Coming to the case in hand, all the three disputed documents, that is, the settlement deed bearing document No.4988 of 2017 in favour of the fourth respondent, the power of attorney bearing document No.4989 of 2017 in favour of the fifth respondent and the agreement for sale bearing document No.4990 of 2017 in favour of the sixth respondent were executed on 13.10.2017, that is,



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during the subsistence of the judgment and decree in O.S.No.126 of 2015 dated 11.02.2016, that is, before the date, on which the learned Additional District Judge, *suo motu* reviewed and set aside the judgment and decree in O.S.No.126 of 2017, by order dated 11.12.2017 and before the date of striking of the plaint in O.S.No.126 of 2015 in C.R.P.(MD)No.2202 of 2017, by order dated 20.09.2018 and later, when the plaint was actually struck off by the learned Additional District Judge, at Tirunelveli on 11.06.2019. In view of the same, there is no irregularity on the part of the first respondent in permitting the respondents 3, 4 and 5 to execute and register the aforesaid documents. However, by refusing to consider the appellant's representation seeking to cancel the aforesaid documents by the first respondent, would it amount to dereliction of statutory duties conferred on him, has to be decided now.

17.It is a settled proposition of law that the power to cancel the registration is a substantive matter. In the absence of any express Provision in that behalf, it is not open to assume that the Sub Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do Superintendence of Registration Offices and make Rules in that behalf. Even the Inspector General has no power to cancel the registration of any document, which has already



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been registered. In the case on hand, the appellant has not sought a declaration

from the High Court that the execution of 3 documents in question was null and void or that there was no title for the executants to transfer the property. The appellant has assailed before this Court only the act of the first respondent refusing to consider his representation and returning his representation without cancelling the registration of documents registered under document Nos.4988 of 2017, 4989 of 2017 and 4990 of 2017 in the office of the second respondent. Therefore, on 07.12.2018, the learned Single Judge rightly applied the law and dismissed the Writ Petition filed by the appellant giving liberty to approach the appropriate forum for ventilating his legal disputes with the respondents 3, 4, 5 and 6. Challenging the same, this Writ Appeal is filed and during the pendency of this Writ Appeal, the appellant has filed 3 more Writ Petitions in W.P. (MD)Nos.18985, 18986 and 18987 of 2021. The aforesaid Writ Petitions were filed, seeking to direct the Sub-Registrar, Melapalayam, Tirunelveli, that is, the second respondent herein to receive the document being the order dated 11.12.2017, passed in O.S.No.126 of 2015 on the file of the learned 1st Additional District Court, Tirunelveli, reviewing the earlier judgment and decree dated 11.02.2016 and to register the same, to direct the second respondent to receive the document being the decree dated 11.06.2019, passed in O.S.No.126 of 2015 on the file of the 1st Additional District Court, striking



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off the plaint in O.S.No.126 of 2015 and to register the same and to direct the

second respondent to receive the document being the order dated 20.09.2018, in

C.R.P.(MD)No.2202 of 2017 on the file of this Court, directing the suit in

O.S.No.126 of 2015 on the file of the learned 1st Additional District Court,

Tirunelveli, to struck off and to register the same respectively. This Court took

up all 3 Writ Petitions filed by the appellant against the second respondent

herein and passed an order on 25.10.2021 and the relevant portion of the same

is extracted as follows:-

“2.The petitioner claims title to the property bearing T.S.Nos.139 to 143 admeasuring 3.31 acres in the aggregate at Melapalayam Ward, Tirunelveli Corporation limit by relying upon registered sale deeds in respect thereof. The petitioner cites Patta Nos.1653, 2691 and 1271 in support of the claim in respect of the above mentioned property. The petitioner points out that one Mohanan filed a collusive partition suit in which a decree was issued on 11.02.2016. Several documents were executed and registered based on the decree in such collusive partition suit. Therefore, the petitioner filed C.R.P.(MD).No.2202 of 2017 to strike off the plaint. In addition, pursuant to proceedings before the First Additional District Judge, Tirunelveli, the decree dated 11.02.2016 was reviewed and set aside by order dated 11.12.2017. Likewise, by order dated 20.09.2018 the civil revision petition was allowed and the plaint was ordered to be struck off.

3.In view of the fact that the documents executed pursuant to



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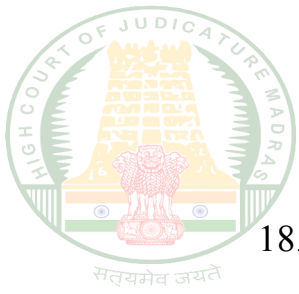
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the above mentioned decree continue to be reflected in the encumbrance certificate pertaining to the property, the petitioner intends to register the aforementioned three orders. The present writ petitions are filed for this purpose.

3.Mr.P.Subbaraj, learned counsel for the State, accepts notice on behalf of the Sub Registrar. He submits that the Sub Registrar may be directed to consider and decide on the registration of the three documents within a reasonable time frame.

4.As regards the orders dated 11.12.2017 and 11.06.2019 as also the order dated 20.09.2018 in C.R.P.(MD).No.2202 of 2017, this Court in several judgments has held that the time limit specified under Section 23 of the Registration Act, 1908 would not apply to the registration of court orders. Therefore, the said aspect should be taken into consideration by the respondent while deciding on the application for registration thereof.

5.Accordingly, W.P(MD).Nos.18985, 18986 and 18987 of 2021 are disposed of by directing the respondent to consider the applications for registration of the Court orders dated 11.12.2017, 11.06.2019 and 20.09.2018 and either register the said orders or issue a reasoned communication indicating the reasons for refusal to do so. In any event, the said process shall be completed within a period of two (2) months from the date of receipt of a copy of this order.”



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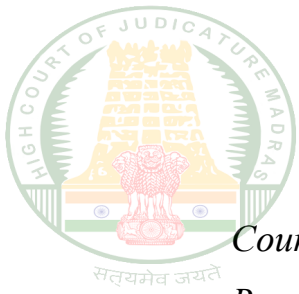
18.The object and purpose of the Registration Act, 1908, *inter alia* is to provide a method of public registration of document, so as to give information to the people regarding legal rights and obligations arising or affecting a particular property and to perpetuate documents, which may afterwards be of legal importance and also to prevent fraud. The preamble to the Registration Act, 1908, is extracted as follows:-

“An Act to consolidate the enactments relating to the registration of documents.”

19.The Hon'ble Division Bench of this Court in the case of ***M.Kathirvel versus the Inspector General of Registration and others*** in W.P.No.10291 of 2022, batch, by its judgment, dated 02.08.2024, while dealing with the constitutional validity of Sections 77(a), 77(b) and 22(b) of the Registration Act, 1908, has held that *“registration cannot confer validity upon an instrument, which is ultra vires, illegal or fraudulent.”*

20.In ***K.Panchapagesa Ayyer versus K.Kalyanasundaram Ayyer*** reported in ***AIR 1957 Madras 472***, the Hon'ble Division Bench of this Court has held as follows:-

“25.The Indian Registration Act unlike the Transfer of Property Act strikes only at documents' and not at transactions. As the Privy



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Council has pointed in M.E. Moolla & Sons Ltd. v. Officid Assignee, Rangoon, ILR 14 Rang 400: (AIR 1936 PC 230) (C), “the provisions of the Registration Act by themselves would not operate to render invalid a mere oral sale.” In the same way the Indian Registration Act does not require that a transaction affecting immovable properties should be carried out by a registered instrument.”

21. Thus the Registration Act, 1908, only strikes at the documents and not at the transaction. The whole object and aim of the Registration Act, 1908, is to govern the documents and not the transactions embodied there in. Thus, it is needless to state that, mere registration of a document by the registering authority does not confer any title, unless the transferor is the rightful and lawful owner of the property involved. In the instant case, though on the date of execution of the settlement deed, power of attorney agreement for sale by the respondents 3, 4 and 5 respectively in favor of the respondents 4, 5, 6 on 13.10.2017, by the strength of the judgment and decree in O.S.No.126 of 2015 on the file of the learned First Additional District Judge, Tirunelveli, dated 11.02.2016, later since the said judgment and decree was set aside by the order of the learned District Judge concerned, by order dated 11.12.2017 and by striking of the plaint in O.S.No.126 of 2015 by the learned Additional District Judge, Tirunelveli, on 11.06.2019, unquestionably the fraudulent way in which the 3rd respondent and one Mohanan managed to get a collusive decree in



O.S.No.126 by 2015 came to be proved. No doubt, fraud vitiates solemn acts.

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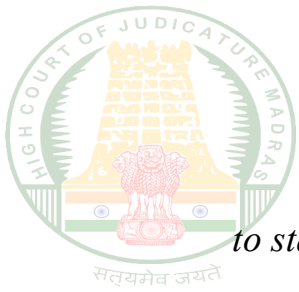
22.The instant case is a classical case where the fraud and collusion between the 3rd respondent and one Mohanan in obtaining a judgment and decree for partition in favor of the 3rd respondent in O.S.No.216 of 2015, which has emboldened the 3rd respondent to execute a chain of fraudulent documents first in favor of the 4th respondent then in favor of the 5th respondent and finally in favor of the 6th respondent with respect to the subject property. In a leading English case, (*Derry and Others v. Peek*) what constitutes fraud was described as follows:-

“Fraud is proved when it is shown that a false representation has been made (i)knowingly, or (ii)without belief in its truth, or or (iii)recklessly, careless whether it be true or false.”

23.In *Smith v. East Elloe Rural District Council, (1956 AC 736 : (1956) 2 WLR 888 (HL)*, it was held that *the effect of fraud would normally be to vitiate all acts and orders.*

24.In *Lazarus Estate Limited v. Beasley, (1956) 1 QB 702*, Lord Denning, L.J. observed :

“No judgment of a Court, no order of a Minister can be allowed



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to stand, if it has been obtained by fraud. Fraud unravels everything.”

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25. In the same judgment, Lord Parker - CJ's observed :

“Fraud vitiates all transactions known to the law of whatever high a degree of solemnity.”

26. In Webster's Comprehensive Dictionary, International Edition, 'forgery' is defined as:-

“The act of falsely making or materially altering, with intent to defraud; any writing which, if genuine, might be of legal efficacy or the foundation of a legal liability.”

27. The Hon'ble Supreme Court of India in para 28 of ***Indian Bank versus Satyam Fibers India Private Limited*** reported in (1996) 5 Supreme Court Cases 550, observing that fraud is an essential ingredient of forgery and further proceeded to observe that:-

“Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake, which prejudices a part, the Court has the inherent power to recall its order.”

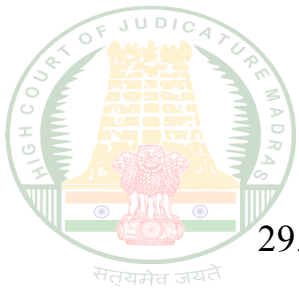


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28. Rightly in this case, the learned First Additional District Judge, at Tirunelveli, on identifying the fraud committed upon by the third respondent and Mohanan by committing forgery in the plaint as well as in the Will relied upon by them, had *suo motu* taken up the case for review, in which the judgment and decree passed by the said Court in O.S.No.126 of 2015 came to be recalled. Since the collusive decree obtained by the third respondent and one Mohanan has been recalled and thereafter, the plaint in O.S.No.126 of 2015 has also been struck off by the learned Trial Court, it is needless to state that the later chain of fraudulent documents executed by the respondents 3 to 5 respectively and registered by the first respondent on 13.10.2017 are *non-est* in law. The Hon'ble Supreme Court in the case of ***S.P.Sengalvarayan Naidu versus Jagannath*** reported in ***1994 1 SCC 1***, has held as follows:-

“Fraud avoids all judicial acts comma ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non-est in the eyes of law. Such a judgment/decre by the first Court or by the highest Court has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”



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29. Thus, the judgment and decree obtained by playing fraud on the learned First Additional District Judge, Tirunelveli, by the third respondent and one Mohanan is a nullity and *non-est* in the eyes of law. Obviously, the documents bearing Nos.4988 of 2017, 4989 of 2017 and 4990 of 2017 of Melapalayam Sub Registry, Tirunelveli district, which were executed and registered by the strength of the Officer judgment and decree in O.S.No.126 of 2015, which was later set aside for fraud and forgery, would automatically be treated as a nullity and all the three said documents are *non-est* in the eyes of law. The entire facts would make it clear that the collusive decree and judgment in O.S.No.126 of 2015 was obtained by the third respondent and one Mohanan by the fraud/forgery committed before the Court and later the registration of the documents bearing Nos.4988 of 2017, 4989 of 2017 and 4990 of 2017 as a consequence of the forgery and fraud committed by the third respondent and the said Mohanan, by playing fraud on the registering authority, that is, the second respondent as well.

30. Hence, we are of the considered view that, a victim of fraud and forgery should not be allowed to toil endlessly in the various Courts of justice running between pillar and post, seeking to undo the injustice suffered by him, as a result of the fraud and forgery played upon him by the respondents 3, 4, 5

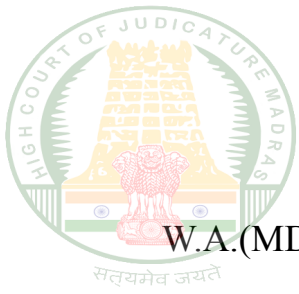


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and 6 along with one Mohanan and the same should be duly appreciated.

WEB COPY Fondly remembering the maxim “*sland fond fraus et jus nunquam cohabitant*” - meaning - “fraud and justice never dwell together”.

31.It is our determination that, justice should not only be done but should manifestly be seen to be done (*nemo debet esse judex in propria sua causa*). As an unravelling measure to the effects of the fraud and forgery played by the respondents 3, 4, 5 and 6 and Mohanan affecting the appellants property rights to ensure fairness and prevent unjust enrichment of the respondents 3 to 6 and to protect the right of the appellant, we are of the considered opinion that, this Court has the discretionary power to direct the second respondent (I)to receive the document bearing order dated 11.12.2017, passed in O.S.No.126 of 2015 on the file of the learned First Additional District Court, Tirunelveli, reviewing the earlier judgment and decree dated 11.02.2016, (II) to receive the document bearing the decree dated 11.06.2019, passed in O.S.No.126 of 2015 on the file of the learned First Additional District Court, striking off the plaint in O.S.No. 126 of 2015, (III) to receive the document bearing the order dated 29 2018 in C.R.P.(MD)No.2202 of 2017 on the file of this Court, directing the suit in O.S.No.126 of 2015 on the file of the learned First Additional District Court, Tirunelveli, to be struck off and (IV) to receive the judgment of this Court in



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W.A.(MD)No.112 of 2019 and register the same with respect to the property comprised in properties comprised in Survey No.1000/1B and 1000/4, which were subsequently given Town Survey Nos.140 and 141 of Kulavanigarpuram Village, Palayamkottai taluk, Melapalayam ward, Tirunelveli Corporation, and register the same. The appellant is directed to forthwith present the same before the second respondent for registering the same.

32.Accordingly, the Writ Appeal is disposed of. There shall be no order as to costs. Consequently, miscellaneous petition is closed.

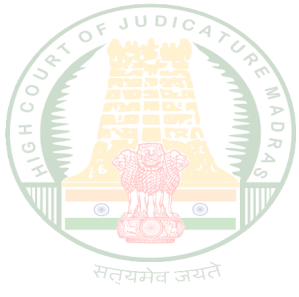
(N.S.S., J.) (L.V.G., J.)
06.01.2025

Index : Yes / No
Neutral Citation : Yes / No
Mrn

To

1.The District Registrar,
Office of the District Registrar,
Kokirakulam, Palayamkottai,
Tirunelveli – 627 009.

2.The Sub Registrar,
Melapalayam,
Tirunelveli – 627 005.



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W.A(MD)No.112 of 2019

N.SESHASAYEE, J.
and
L.VICTORIA GOWRI, J.

Mrn

Pre-delivery Judgment made in
W.A(MD)No.112 of 2019

06.01.2025