

W.P.(MD) No.9857 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :28.03.2023

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.9857 of 2016

and

W.M.P. (MD) Nos.7783 and 7784 of 2016

V.Selvi

... Petitioner

Vs.

1. The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate, Chennai.

2. The District Registrar,
(Administration), Sivagangai.

3. N.Subha,

4. M.Suseela,

5. M.Vijay @ Vijayakumar,

6. M.Rajendran,

7. Selvi. Rajathi.

... Respondents



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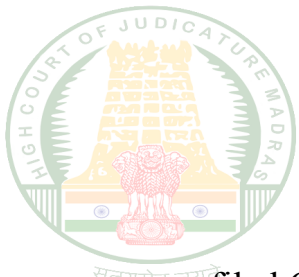
PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.489/A1/E1/2013, dated 22.03.2016 and quash the same as illegal and consequently direct the 2nd respondent to cancel the registration of the sale deed dated 05.02.2012 in vide document No.161/2012 within a time limit fixed by this Hon'ble Court.

For Petitioner :Mr.VR.Shanmuganathan
For Respondents :Mr.M.Prakash
Additional Government Pleader
for R1 and R2
Mr.AL.Vijay Devaraj for R3
No appearance for R4 to R8

ORDER

The petitioner assails an order dated 22.03.2016 of the second respondent by which the second respondent rejected the request of the petitioner to cancel the registration of the sale deed dated 05.07.2012.

2. The petitioner states that the property bearing Survey No.33/2, T.S.No.3/2A1A admeasures 5 acres and 17 cents. Since the said property was the ancestral property of the petitioner, the petitioner states that she



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filed O.S.No.96 of 2000 before the Sub Judge, Sivagangai, seeking partition of the said property. The suit was directed against the brothers and sisters of the petitioner, including the husband of the fourth respondent herein. A preliminary decree was issued in the said suit on 03.01.2006. By such preliminary decree, the petitioner states that her 6/20th share in the property was recognized. The 6/20th share amounts to 1 acre and 55 cents in the total extent of 5 acres and 17 cents. A final decree was also issued on 26.09.2008 by way of an order passed in I.A.No.647 of 2006 in O.S.No.30 of 2004.

3. Learned counsel for the petitioner refers to and relies upon the above mentioned preliminary decree and final decree. He also refers to the patta transfer order which was issued on such basis on 28.05.2010. In light of the preliminary decree and final decree, learned counsel submits that the sale deed executed by respondents 4 to 7 in favour of the third respondent is liable to be cancelled inasmuch as the partition suit and the decrees issued therein were suppressed. By inviting my attention to the impugned order, learned counsel submits that the said order is not sustainable inasmuch as the second respondent is empowered to initiate action under Sections 82 and



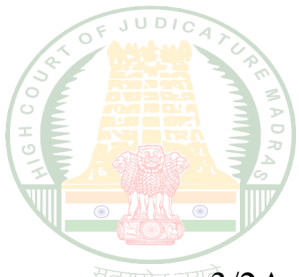
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83 of the Registration Act, 1908 (the Registration Act) whenever a false statement is made before the registering authority. With reference to the impugned order, learned counsel submitted that the statement that the land purchased by the third respondent is in terms of the decrees passed in the partition suit is a false statement.

4. Learned counsel further submits that the Registration Act was amended and Section 77A was introduced therein. Pursuant to such amendment, he submits that the registering authority is empowered to cancel a registered document if such registration had contravened Section 22A and 22B of the Act. Therefore, learned counsel submits that the impugned order should be set aside and the matter remanded for reconsideration.

5. In response to the above submissions, learned counsel for the third respondent submits that the entire extent of 5 acres and 17 cents is contained in Survey No.33/2. Therefore, he submits that the decree passed in the partition suit wrongly referred to the lands as lands bearing T.S.No.



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3/2A and 3A/2A. He further submits that respondents 4 to 7 are close
relations of the petitioner and that the third respondent acquired only 10
cents of land from them. Consequently, he states that this is a pure title
dispute between the petitioner and members of her family. Hence, learned
counsel submits that the impugned order does not call for interference.

6. The settled legal position is that questions of title should be determined by a civil court and not by a registering authority. The registering authority is, however, empowered to conduct an enquiry in relation to the matters specified in Section 82 of the Registration Act. The matters specified in Section 82 include the making of a false statement before the registering authority, the production of a false document before the registering authority, impersonation and the like. Section 83 empowers the registering authority to initiate prosecution for any offence under the Registration Act. According to learned counsel for the petitioner, respondents 4 to 7 had suppressed the partition suit while executing the sale deed dated 05.07.2012. In course of enquiry before the registering authority, learned counsel submits that it was falsely stated that the land purchased by

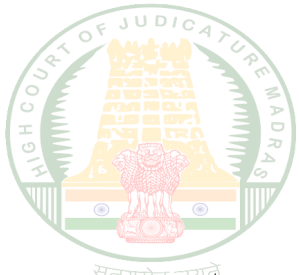


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the third respondent was allotted to the share of respondents 4 to 7 under the preliminary and final decree of partition. Whether such false statement was made is within the scope of enquiry under Section 82 of the Registration Act.

7. In addition, it should be noticed that the power of the registering authority to cancel a registered document is exercisable if such registered document falls within the scope of Section 77A. Whether Section 77A is prospective or retrospective and, if prospective, whether it is prospective *qua* registered document or *qua* the date of exercise of authority is also pending consideration before a Division Bench of this Court.

8. In the above facts and circumstances, the impugned order is liable to be interfered with to the extent that the second respondent has failed to examine and determine whether any false statements were made before him. Therefore, the matter is remitted for reconsideration after setting aside the impugned order. The second respondent is directed to reconsider whether a false statement was made and whether power can be exercised in



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terms of Sections 77A, 82 and 83 of the Registration Act. Before taking any decision, all interested parties, including the petitioner and respondents herein, should be put on notice and provided reasonable opportunity.

9. W.P.(MD) No.9857 of 2016 is disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petitions are closed.

28.03.2023

NCC :No
Internet :Yes
Index :No
PKN

To

1. The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate, Chennai.
2. The District Registrar,
(Administration), Sivagangai.



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