

N. Chinnasamy vs The District Registrar ... on 16 December, 2022

Author: N.Sathish Kumar

Bench: N.Sathish Kumar

W.P.No.33785/2022 of 2022 and

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.33785 of 2022 and
M.P.No.33291 of 2022

N. Chinnasamy

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Vs

1. The District Registrar (Administration),
O/o. Integrated Registration Office Complex,
No 1/529, Neriperuchhal Village,
Poolavapatti Post
Tiruppur District-64 1602.

2. M. Shanmugam

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Prayer: Writ Petition is filed under Article 226 of the Constitution to issue a Writ of Certiorari or Mandamus calling for the records of the proceedings made in Na Ka No.3475 /B5/2022 dated 21.10.2022 issued by the 1st Respondent and the impugned complaint dated 12.10.2022 lodged by the 2nd Respondent to the 1st Respondent against the petition to quash the same and consequently forbear the 1st Respondent from

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continuing proceedings on the basis of the complaint dated 12.10.2022 made by the 2nd Respondent against the Petitioner.

For Petitioner : Mr.G. Ethirajulu

For Respondents : Mr. Yogesh Kannadasan
Special Govt. Pleader

ORDER

This writ petition has been filed to quash the proceedings of the 1st Respondent in Na Ka No.3475/B5/2022 dated 21.10.2022 and the complaint lodged by the 2nd Respondent to 1st Respondent dated 12.10.2022 against the petitioner and consequently forbear the 1st Respondent from continuing proceedings against the petitioner.

2. It is submitted by the learned counsel for the Petitioner that an enquiry notice under Section 77-A of the Registration Act was issued by the 1st Respondent/District Registrar (Administration) to the Petitioner to appear before him for enquiry on the basis of the complaint given by the 2nd Respondent. The learned counsel appearing for the Petitioner further submitted that the very complainant is the brother of the Petitioner, his <https://www.mhc.tn.gov.in/judis> W.P.No.33785/2022 of 2022 and M.P.No.33291 of 2022 complaint indicates that he is not claiming any right over the property, but it is only questioned the manner in which the document is registered and with regard to showing the boundaries.

3. Mr. Yogesh Kannadasan, Special Government Pleader takes notice for the 1st Respondent. It is the submission of the learned Special Government pleader that according to the Respondent the boundaries specified in the document is not in order, besides the Petitioner also misrepresented as if there was a oral partition and registered the document.

Based on the above complainant notice has been issued for cancelling the document.

4. Learned counsel appearing for the Petitioner submitted that enquiry cannot be proceeded under Section 77-A of the Registration Act for these type of cases. Only documents contrarily registered under under Section 27- A and Section 22-B of the Registration Act can be cancelled under Section 77-A of the Act.

5. Section 22 B of the Act deals with refusal to register forged <https://www.mhc.tn.gov.in/judis> W.P.No.33785/2022 of 2022 and M.P.No.33291 of 2022 documents and other documents prohibited by law, which reads as follows:

"Section 22-B. Refusal to register forged documents and other documents prohibited by law.— Notwithstanding anything contained in this Act, the registering officer shall refuse to register the following documents, namely:— (1) forged document;

(2) document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force;

(3) document relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal;

(4) any other document as the State Government may, by notification, specify."

6. Thus, only the documents that fall within the ambit of forgery or any transaction which is prohibited by any Central Act or State Act for the time being in force or any property which has already been attached by a <https://www.mhc.tn.gov.in/judis> W.P.No.33785/2022 of 2022 and M.P.No.33291 of 2022 competent authority, the Registering officer shall refuse to register. When the sale has taken place those documents can be cancelled under Section 77- A of the Registration (Tamil Nadu Second Amendment) Act, 2021.

7. Therefore, merely because someone has executed the document believing that the property belongs to him that will not amount to forgery. It is relevant to rely on the judgment of the Hon'ble Supreme Court in Mohammed Ibrahim Vs. State of Bihar reported in (2009) 8 SCC 751. In paragraphs 14, 16 and 17 the Hon'ble Supreme Court has held as follows:

"14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, <https://www.mhc.tn.gov.in/judis> W.P.No.33785/2022 of 2022 and M.P.No.33291 of 2022 alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind;

or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a

document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or <https://www.mhc.tn.gov.in/judis> W.P.No.33785/2022 of 2022 and M.P.No.33291 of 2022 empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting <https://www.mhc.tn.gov.in/judis> W.P.No.33785/2022 of 2022 and M.P.No.33291 of 2022 to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

8. Admittedly, in this case there is no case of forgery, as the petitioner himself executed the document. Therefore, question of forgery does not arise at all. Every dispute between the joint family members cannot be construed as forgery.

9. Considering the above, this Court is of the view that for every complaint the Revenue Authorities cannot annul the documents, except the documents which are registered and fall within the ambit of under Section 22-A and Section 22-B of the Registration Act. In respect of other documents, the authorities have no role whatever to conduct the enquiry to cancel the document. Accordingly, the impugned notice under Section 77-A <https://www.mhc.tn.gov.in/judis> W.P.No.33785/2022 of 2022 and M.P.No.33291 of 2022 of the Registration Act dated 21.10.2022 is quashed.

10. In view of the above, the writ petition is partly allowed. No costs.

Consequently connected Miscellaneous Petition is closed. No costs.

16.12.2022 ggs Copy to:

The District Registrar (Administration), O/o. Integrated Registration Office Complex,
No 1/529, Neriperuchhal Village, Poolavapatti Post Tiruppur District-64 1602.

<https://www.mhc.tn.gov.in/judis> W.P.No.33785/2022 of 2022 and M.P.No.33291 of
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