

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.1399 of 2021

ORDER:

One Mangipudi Nagaraju filed this petition under Article 226 of the Constitution of India seeking the following relief:

“to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus

- (a) declaring the Sale Deeds i.e. (i) Document No. 689/2020 dt.05.02.2020 (ii) Document No.879/2020 dt.13.02.2020 (iii) Document No.1914/2020, dt.06.05.2020 and (iv) Document No.1924/2020 dt.07.05.2020, which were illegally registered by the 5th respondent in contravention of the Judgment and Decree dt.29.04.2019 in O.S.No.20/2002 and O.S.No.82/2002 passed by the Senior Civil Judge, Amalapuram,
- (b) declaring the consequential action of the respondents 7 and 8 in mutating the revenue record in favour of unofficial respondents 14 to 16,
- (c) declaring the action of the respondents in not taking any action on the illegal construction being made by Respondents in the petitioner's land admeasuring Ac.0.30 cents, situated in Sy.No.183/1 (Ac.0.10 cents) and Sy.No.183/2 (Ac.0.20 cents) of Bhatnavilli Village, Amalapuram Rural Mandal, East Godavari District covered by impugned sale Deeds bearing No.879/2020 dt.13.2.2020 and No.1924/2020 dt.7.5.2020 and also
- (d) declaring the action of the respondents in taking steps to dispossess the petitioner from his land admeasuring Ac.7.55 cents situated in Sy.No.183/1, 183/2, 183/3, 3/5, 3/6, 35/1A, 35/1B, 35/2 and 35/3 of Bhatnavilli Village, Amalapuram Rural Mandal, East Godavari District covered by impugned Sale Deeds as illegal, unjust, arbitrary, discriminatory, vitiated by mala fides and extraneous considerations and violative of Principles of Natural Justice and also violative of Articles 14, 21 and 300-A of Constitution of India apart from contrary to relevant statutes and the Rules made thereunder and consequently set aside the impugned Sale Deeds and direct the respondents to demolish the illegal constructions in the said land.”

One Kappaganthula Lakshmi Narasimha Murthy (for short “Murthy”) and Smt.Kappaganthula Lakshmi Sodemma (for short “Sodemma”) are husband and wife, not blessed with any children. Murthy was the absolute owner of (i) agricultural land to an extent of

Ac.16.63 ½ cents situated in various survey numbers of Bhatnavilli Village, Amalapuram Rural Mandal, and (ii) house constructed in Ac.0.10 cents in Sy.No.97/21 of Bhatnavilli and he alienated his entire property to his wife during his lifetime. He died on 19.10.2015 leaving Sodemma, who is the maternal aunt of the petitioner (sister of mother of the petitioner), bequeathed the said property to him as he had taken care of their welfare at the old age. Thus, the petitioner became the absolute owner and possessor of the said property as per the registered Will deed dated 02.01.2018 executed by Sodemma, who died on 17.11.2019. Thus, the petitioner became absolute owner of the property as a legatee under the Will and he is in possession and enjoyment of the property.

One Prabhakara Rao, respondent No.15, son of younger brother of Murthy, having lost all the properties, fell to the share of his father, with a mala fide intention to become owner of the property of Murthy, hatched a plan and fabricated an adoption deed dated 24.05.1993 to claim that Murthy and Sodemma adopted respondent No.14, and got the signature of Murthy and Sodemma on the said fabricated adoption deed by fraud and misrepresentation on the day when Murthy executed and registered a sale deed in favour of his wife and also requested the said couple to perform thread marriage (Vadugu) to respondent No.14. Out of good faith, the said couple performed thread marriage (Vadugu) to respondent No.14. Even assuming that there is adoption deed, it was not acted upon as is evident from Certificate issued by the Principal, SKBR College, Amalapuram, House Hold Cards of Mr.Murthy and respondent No.15 etc. In the year 2002, respondent No.15 fabricated unregistered agreement of sale on the blank stamp papers signed by Mr.Murthy having believed him. By relying upon the said fabricated adoption

deed and photographs of thread marriage (Vadugu) performed by the said couple, respondent No.14 filed O.S.No.82 of 2002 for partition of the above mentioned property by claiming that he is the adopted son of Murthy and Sodemma.

Respondent No.15 also filed O.S.No.20 of 2002 for specific performance of unregistered agreement of sale alleged to have been executed by Murthy on 25.01.1985 in connection with land admeasuring Ac.8.44 1/3rd including the subject land of Ac.7.55 cents i.e. after lapse of more than 17 years from the date of alleged execution of the said unregistered agreement. Murthy and Sodemma contested both the suits and denied the execution of both the fabricated adoption deed dated 24.05.1993 and alleged unregistered agreement of sale dated 25.01.1985

During the pendency of both the said suits, respondent No.17, the then Minister for Animal Husbandry alleged to have purchased the property, which is the subject matter of those two suits, and started construction of palatial building in the subject property and he by abusing his power as the Minister for Animal Husbandry made the authorities concerned to issue antedated permissions in contravention of Rules. Then, the petitioner Sodemma approached this Court by filing W.P.No.12456/2012, W.P.No.19410/2012, W.P.No.25289/2012, wherein this Court granted interim orders dated 26.04.2012, 10.07.2012 and 03.09.2012 respectively directing that there shall not be any construction in the subject property. As this Court was pleased to protect the interest of the petitioner and Sodemma, respondent No.17 who was the Minister for Animal Husbandry at the relevant point of time (2011-14), used to send his agents to the Trial Court to inform about the developments in the said suits. As the Minister is personally involved in the said suits,

and he had been regularly sending his agents as and when the said suits are listed, these Suits were being popularly called as “Minister Gari Files”. While so, after full-fledged trial, the trial Court decreed both the suits in favour of respondent Nos.14 and 15 vide judgment dated 29.4.2019 in O.S.No.20/2002 and O.S.No.82/2002. This judgment is not only erroneous and perverse but also contrary to well settled legal principles and contrary to various judgments of the Apex Court more particularly judgment of the Supreme Court reported in “**Uttam v. Saubhag Singh**¹”.

Aggrieved by the decree and judgment in both the suits referred above, petitioner and Sodemma filed A.S.No.28 of 2019 against O.S.No.82 of 2002 and also filed A.S.No.29 of 2019 against O.S.No.20 of 2002 before District Court. In both the said appeals, they filed interlocutory applications for interim relief. However, due to various reasons, including the transfer of the presiding officer, ill-health of the new Presiding Officer, Covid-19 pandemic and due to the demise of Sodemma on 17.11.2019, the said interlocutory applications are still pending.

In the decree and judgment dated 29.04.2019, a specific direction was issued against defendant Nos.2 to 4 therein to execute and register a sale deed in respect of the schedule property, in favour of the plaintiff therein at his expenses as per the agreement of sale dated 25.01.1985. Thus, as per the said decree and judgment dated 29.4.2020 in O.S.No.20 of 2002, Sodemma, petitioner herein and respondent No.14 has to execute sale deed in favour respondent No.15. As petitioner filed appeal challenging the decree and judgment dated 29.04.2019, petitioner and Sodemma did not execute sale deed in favour of respondent No.15 and the property,

¹ 2016 (4) SCC 68

which is the subject matter of O.S.No.82 of 2002, is not partitioned among respondent No.14, petitioner and Sodemma and no Execution Petition was filed by respondent Nos.14 and 15.

It is further contended that without following mandatory procedure and during pendency of both the appeals, respondent No.17, who is the Minister for Social Welfare, plunged into action and influenced respondent Nos.14 and 15 to register the subject property in favour of respondent No.16, who is none other than his wife, in contravention of the said Decree and Judgment dated 29.04.2019. In order to complete the registration in favour of his wife, respondent No.17 forced respondent Nos.3 to 13 and got mutated the names of respondent Nos.14 and 15 in the revenue records and later made the respondent Nos.3 to 5 to register the subject property in favour of respondent No.15 first and later in favour of respondent No.16, in contravention of the said Judgment dated 29.04.2019 in O.S.No.20 of 2002. Thus, respondent Nos.15 and 16 played fraud on the petitioner, obtained sale deeds totally deviating the procedure and direction issued by the Senior Civil Judge's Court. Therefore, very registration of sale deed by the Registrar is a grave illegality.

By relying upon the impugned sale deeds, respondent Nos.16 and 17 started illegal construction in the subject property owned and possessed by the petitioner in contravention of the subsisting interim orders dated 26.04.2012, 10.07.2012 and 03.09.2012 passed by this Court in W.P.No.12456 of 2012, WP.No.19410 of 2012, W.P.No.25289 of 2012 respectively.

Aggrieved by the said illegal construction by respondent No.17, the petitioner and Sodemma made a representation to the District Town and Country Planning Officer, Kakinada. In response to the

same, the District Town and Country Planning Officer directed Panchayat Secretary by letter bearing Lr.Roc.No.86/2012/DTCPO / KKD dated 29.03.2012 to inspect the site and submit detailed remarks so as to take further action in the matter. The Panchayat Secretary did not submit any report, and the respondent No.17 had been proceeding with the said illegal construction.

It is the specific case of the petitioners that decrees and judgment dated 29.04.2019 in O.S.No.20 of 2002 and O.S.No.82 of 2002 is not only erroneous and perverse, but also contrary to well settled legal principles and contrary to various judgments of the Supreme Court. Therefore, the petitioner and Sodemma filed A.S.No.28 of 2019 against the judgment in O.S.No.82 of 2002 and A.S.No.29 of 2019 against the judgment in O.S.No.20 of 2022 and that the sale deeds were obtained by playing fraud and deviating the directions issued by the Court in the said suits, thereby the petitioner having no other alternative, approached the Court seeking discretionary relief as claimed in the writ petition.

Respondent No.4, Sub-Registrar filed counter denying material allegations *inter alia* contending that he is under statutory obligation to refuse any documents which falls under Section 22-A of Registration Act or where an injunction is granted restraining the parties to suit from alienating the property. The registration manual standing order 216 stipulates that a sub-registrar shall not register any documents where there is injunction from alienation of the suit schedule property though the sub-registrar is not party to the suit proceedings. In the present case on hand, it is not even the case of the petitioner that an injection was granted restraining parties to the suit from alienation not the said land is false under section 22-A of the Registration Act.

It is further contended that the remedy open to the petitioner is to file appropriate proceedings for cancellation of registered document. Adjudication of complicated questions of fact of law always the domain of competent courts of law; Section 3 of Specific Relief Act, 1963 provides relief to seek for cancellation of documents. It is alleged that after passing of the decree, the sub-registrar had registered sale deeds, when the remedy would be to either to file petition seeking cancellation of the said sale deeds or to file independent suit if the petitioner is advised so. As the efficacious and alternate remedy is available to the petitioner, the present Writ petition is not maintainable. The sub-registrar does not have any statutory power to cancel the documents without a decree from competent court of law. In view of the same the Writ Petition is liable to be dismissed apart from that the petitioner had not brought to the notice of sub-registrar office regarding decree in the suit and even otherwise whether appeal had been filed or not and if appeal is filed against decree whether any stay had been granted by appellate court all this facts cannot be adjudicated by a sub-registrar.

It is further contended that as the sub-registrar does not have jurisdiction or statutory power to cancel a registered document the petitioner may produce any direction against the sub-registrar from competent Court of law for cancellation of the document, in the absence of any decree for cancellation of any document the present writ petition is not maintainable, requested to dismiss the writ petition.

Respondent No.8, Tahsildar filed independent counter denied the allegation that respondent No.17 misused his authority for mutating the name of respondent No.16 in the revenue records,

while contending that only on receipt of intimation about the acquisition of right in the immovable property, followed the procedure, mutated the name and absolutely there is no influence on him. Respondent No.8 furnished the details of holdings of land by several persons including respondent No.16, and the details are as follows:

Sy. No.	Extent	Enjoyer Name
183/1	1.76	Pinipe Baby, W/o Viswarup
183/2	1.57	Pinipe Baby, W/o Viswarup
183/3	0.20	Pinipe Baby, W/o Viswarup
155/6	0.67	Kappaganthula Satya Vara Prasad S/o Lakshmi Narasimhamurthy
151/1a	0.11	Mattaparthi Satyanarayana S/O Subbarao
151/1b	0.10	Kappaganthula Lakshmi Sodemma W/o Lakshmi Narasimmurthy
155/2	1.19	Kappaganthula Satya Vara Prasad S/o Lakshmi Narasimhamurthy
155/4	0.51	Kappaganthula Satya Vara Prasad S/o Lakshmi Narasimhamurthy (0.46 Ac.) Tottaramudi Subbarao S/O Venkatareddy(0.05)
155/3	1.20	Kappaganthula Satya Vara Prasad S/o Lakshmi Narasimhamurthy
155/5	0.73	Kappaganthula Satya Vara Prasad S/o Lakshmi Narasimhamurthy
155/9	0.42	Kappaganthula Satya Vara Prasad S/o Lakshmi Narasimhamurthy
155/8	0.38	Kappaganthula Satya Vara Prasad S/o Lakshmi Narasimhamurthy
3/5	1.29	Pinipe Baby, W/o Viswarup
3/6	0.60	Pinipe Baby, W/o Viswarup
151/2B	0.535	Kappaganthula Lakshmi Sodemma W/o Lakshmi Narasimmurthy
97/21	0.15	Kappaganthula Lakshmi Narasimhamurthy S/O Bhagiradhi
96/10	0.50	Kappaganthula Satya Vara Prasad S/o Lakshmi Narasimhamurthy
96/9	0.18	Kappaganthula Satya Vara Prasad S/o Lakshmi Narasimhamurthy
97/19	0.19	Kappaganthula Satya Vara Prasad S/o Lakshmi Narasimhamurthy

97/20	0.08	Kappaganthula Satya Vara Prasad S/o Lakshmi Narasimhamurthy
139/1C	1.00	Kappaganthula Satya Vara Prasad S/o Lakshmi Narasimhamurthy
35/2	0.77	Pinipe Baby, W/o Viswarup
35/3	0.66	Pinipe Baby, W/o Viswarup
35/1A	0.36	Pinipe Baby, W/o Viswarup
35/1B	0.34	Pinipe Baby, W/o Viswarup
139/4	0.285	Illa Veera Venkata Satyanarayana S/o Veeramsetti

Respondent No.8 denied issue of pattadar passbook in favour of the petitioner since he has no possessory rights and he cannot claim the property.

Respondent No.8 pleaded ignorance about the absolute ownership of the petitioner for the land in an extent of Ac.16.73 ½ cents including house constructed in Ac.0.10 cents and contended that the petitioner is never in possession and enjoyment of the property.

Respondent No.8 contended that the land in Sy.No.183/1, 183/2, 3/5 and 3/6 to an extent of Ac 4.42 Cts was converted into non agriculture land and the proceedings were already issued by competent authority i.e., Revenue Divisional Officer, Amalapuram vide ref. No.D.Dis.D.1332/2020, dated 26.06.2020 and D.Dis.D.1332/2020, dated 26.06.2020. The land conversion order was issued in the name of the person viz., Smt. Pinipe Baby W/o Pinipe Viswaraup after due verification of right over the land. Finally, respondent No.8 requested to dismiss the writ petition.

Respondent No.11, Panchayat Secretary of Bhatnavalli Gram Panchayat, filed separate counter contending that the gram panchayat is no way concerned with the reliefs sought in the writ petition except with regard to the constructions being raised by the

respondent No.16. It is further contended that respondent No.16 obtained the building permission from the Godavari Urban Development Authority vide proceedings dated 24.11.2020. Thereafter, respondent No.16 commenced the construction of the building in her site. The writ petition is liable to be dismissed on the ground of non-joinder of the necessary party i.e. Godavari Urban Development Authority which has granted the building permission in favour of the respondent No. 16.

It is further contended after receipt of the interim order passed by this Court, respondent No.11 issued notice dated 08.03.2021 to respondent No.16 directing to stop the further construction of the building. Again, he issued notice dated 18.03.2021 to respondent No.16. By following the notice issued by the gram panchayat, respondent No.16 stopped further construction. So far as the civil dispute or title dispute is concerned the gram panchayat is no way concerned. Moreover, there are civil cases pending with regard to the title to the property. This gram panchayat has no authority to grant building permission beyond 300 sq. mts of the site. Hence, the gram panachayat is nothing to do with the present dispute, requested to dismiss the writ petition.

Respondent No.16 filed I.A.No.03 of 2021 to vacate the interim order granted by this Court on 20.01.2021. Along with I.A.No.03 of 2021, respondent No.16 filed counter. While denying all the material allegations, she contended that the writ petition is liable to be dismissed on the ground that the power of High Court under Article 226 of the Constitution of India is purely discretionary and extraordinary and the petitioner has no locus standi to question the sale deed.

It is specifically contended that one Sri Kappaganthula Lakshmi Narasimha Murthy was the owner of the property and he alienated the property in question in favour of respondent No.15 herein under the agreement of sale dated 25.01.1985 and delivered the property covered under the said agreement of sale to respondent No.15. Respondent No.15 herein has filed the suit in O.S.No.20/2002 against Kappagantula Laxmi Narasimha Murthy who executed the agreement of sale dated 25.01.1985, his wife Smt.K.Lakshmi Sodemma, his adopted son i.e. respondent No.14 herein and also against the petitioner herein for specific performance of the agreement of sale dated 25.01.1985, on the file of the court of the Senior Civil Judge, Amalapuram. Respondent No.14 herein has filed O.S.No.82 of 2002 for partition of A and B Schedule property into 4 equal shares and he claimed 'B' Schedule property subject to result of O.S.No.20 of 2002. Both the suits were clubbed together. The petitioner herein was added as defendant No.4 in O.S.No.20/2002 since there are rumors that the defendants 1 to 3 are going to bring some documents into existence in his name to defeat the claim of the plaintiff therein but he is not having any right over the property in question. No separate written statement is filed by the 4th defendant i.e. petitioner herein and common written statement was filed by defendant Nos.1, 3 and 4. Respondent No.16 denied the allegation that her name was mutated in the revenue records by using influence of her husband as Minister.

Finally, respondent No.16 contended that the writ petition is not maintainable as the remedy open to the petitioner is elsewhere, requested to dismiss the writ petition.

Heard Sri L.Ravichandra, learned senior counsel for the petitioner and Sri D.V.Seetharama Murthy, learned senior counsel for respondent Nos.16 and 17 and learned Assistant Government Pleader for Revenue.

The facts pleaded both in the petition and in the counter are not in dispute except alleged playing of fraud on the Sub-Registrar in mutating the name of respondent Nos.14 and 15, registration of the property in the name of respondent No.16 allegedly at the instance of respondent No.17. The basis for claim of the petitioner is that when the decree was passed in O.S.No.20 of 2002 and O.S.No.82 of 2002, appeals are pending against both the decrees and common judgment, execution of sale deed by respondent Nos.14 and 15 in favour of respondent No.16 allegedly at the instance of respondent No.17 deviating the decree is a serious illegality and it amounts to 'fraud'. The Tahsildar, respondent N.8 is not supposed to mutate the names of respondent Nos.14 and 15 and only due to influence of respondent No.17, respondent No.8 mutated the names of respondent Nos.14 and 15 so as to enable the Sub-Registrar, respondent No.4 to register the document executed by respondent Nos.14 and 15 in favour of respondent No.16, in total deviation of of decree passed by the Senior Civil Judge, Amalapuram in O.S.Nos.20 and 82 of 2002 which is the subject matter of appeal Nos.28 and 29 of 2019. As per the said decree, the petitioner herein is also required to join in execution of the sale deed, but without joining the petitioner as executant, the transaction was completed, which is contrary to the direction issued by the Senior Civil Judge, Amalapuram, which amounts to 'fraud'. Therefore, very mutation of name of respondent Nos.14 and 15 in the revenue records, now

mutated the name of respondent No.16 after completion of sale transaction; registration of document is tainted by 'fraud'. On this ground alone, the petitioner claimed the relief.

"Fraud" is defined under Section 17 of the Indian Contract Act, 1872, which is as follows:

"17. 'Fraud' defined —'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent¹, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:— —'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent¹, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—"

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence, is, in itself, equivalent to speech."

To constitute fraud, there must be a suggestion, as a fact, of that which is not true, by one who does not believe it to be true; the active concealment of a fact by one having knowledge or belief of the fact; a promise made without any intention of performing it; any other act fitted to deceive; any such act or omission as the law specially declares to be fraudulent.

In the present facts of the case, undisputedly, two appeals i.e. appeal Nos.28 and 29 of 2019 are pending between the petitioner, respondent Nos.14 and 15 before the District Court, but no interim

order was passed for the reasons explained by the petitioner in the affidavit filed along with the petition. In the absence of any interim direction, registration of a document when presented for registration satisfying the requirements under the Stamp Act and Registration Act is justified. Moreover, the Registrar is bound to register the document presented for registration unless there is prohibition from registration of such document pertaining to the land covered by Section 22A, 35 (3) and Section 71 of the Registration Act. In the instant case, no such ground is raised, but contended that the entries were mutated in the revenue records and the documents were registered fraudulently.

The act of respondent Nos.14 and 15 is nothing but discharge of their obligation under agreement of sale, and they executed sale deed in favour of respondent No.16 by respondent Nos.14 and 15, as respondent No.14 became the owner of the property as adopted son by adoption deed executed by Murthy and Sodemma. Respondent No.15 obtained agreement of sale from Murthy during his life time. Therefore, execution of registered sale deed by respondent Nos.14 and 15 in favour of respondent No.16 by playing fraud is purely a mixed question of fact and law, such question cannot be decided in the writ petition while exercising power under Article 226 of the Constitution of India. When a similar question came up before the Apex Court in “**Satya Pal Anand v. State of M.P.**”², the Apex Court held that “a party aggrieved by registration of a document is free to challenge its validity before a competent Civil Court.”

² AIR 2016 SC 4995

In “**Thota Ganga Laxmi v. Government of Andhra Pradesh**”³ the Apex Court held as follows:

“In our opinion, there was no need for the Appellants to approach the civil Court as the said cancellation deed dated 4.8.2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if 'A' transfers a piece of land to 'B' by a registered sale deed, then, if it is not disputed that 'A' had -the title to the land, that title passes to 'B' on the registration of the sale deed (retrospectively from the date of the execution of the same) and 'B' then becomes the owner of the land. If 'A' wants to subsequently get the sale deed cancelled, he has to file a civil suit for cancellation or else he can request 'B' to sell the land back to 'A' but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.

4. In this connection, we may also refer to Rule 26(i)(k) relating to Andhra Pradesh under Section 69 of the Registration Act, which states:

The registering officer shall ensure at the time of preparation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing natural consent or orders of a competent civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale:

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provision of law.

In “**Satya Pal Anand v. State of M.P.**” (referred supra) the judgment in “**Thota Ganga Laxmi v. Government of Andhra Pradesh**” (referred supra), was referred by the Apex Court. As per the principle laid down in the above judgments, if a party to the

³ (2010)15SCC207

document wants to annul the document, he has to file a suit under Section 31 of the Specific Relief Act before the competent Civil Court and if, third party wants to annul the document, he has to approach the competent Civil Court and seek relief under Section 34 of the Specific Relief Act. While exercising jurisdiction under Article 226 of the Constitution of India, this Court cannot annul such document on the ground of 'fraud' and 'misrepresentation' since 'fraud' and 'misrepresentation' are mixed questions of fact and law, such roving enquiry cannot be conducted by the Constitutional Court while exercising power under Article 226 of the Constitution of India to issue a writ of Mandamus as it is a extraordinary and discretionary relief. Therefore, the remedy open to the petitioner, who is not a party to the document, is to approach the competent Civil Court and file appropriate suit for annulment of those documents since filing of suit is effective and efficacious remedy available to the petitioner. In the alternative, the petitioner may implead respondent No.16 herein as respondent in pending civil appeals, as the sale is hit by Section 52 of the Transfer of Property Act.

Normally, the Courts are not entertaining writ petition when effective and efficacious remedy is available to the petitioner before the Civil Court or any other statutory authority or forum. Recently, on 03.09.2021, four exceptions are carved out by the Apex Court in "the Assistant Commissioner of State Tax v. M/s. Commercial Steel Limited (Arising out of SLP (C) No.13639 of 2021 @D.No.11555 of 2020) ", they are as follows:

- (i) a breach of fundamental rights;
- (ii) a violation of the principles of natural justice;
- (iii) an excess of jurisdiction; or
- (iv) a challenge to the vires of the statute or delegated legislation.

In view of the law laid down by the Apex Court in the above judgment, when remedy by way of suit is available to annul the document under challenge, which is more effective and efficacious remedy, writ of Mandamus cannot be issued.

When an identical question came up for consideration before the High Court of Judicature at Madras in “R.Rajkumar v. The District Collector (W.P. (SR).No.58109 of 2017)”, the learned single judge rejected the writ petition holding that the relief sought for in the writ petition is a matter of evidence and unless the parties enter the box and prove their case in accordance with law, a finding cannot be given against the settlement deed. It is further held that since the prayer sought for by the petitioner is to declare the settlement deed as null and void, the same can be sought only before the competent Civil Court.

In the present case also, the petitioner claimed an identical relief that the Document No. 689/2020 dt.05.02.2020 (ii) Document No.879/2020 dt.13.02.2020 (iii) Document No.1914/2020, dt.06.05.2020 and (iv) Document No.1924/2020 dt.07.05.2020 were registered illegally.

When the documents are presented for registration before the Sub-Registrar, his duty is to register the same subject to any bar contained in any law and satisfying the requirements under the provisions of the Stamps and Registration laws. Such registration of document is nothing but discharging public duty. Therefore, the Sub-registrar satisfying with the compliance of requirements under the Stamps Act and the Registration Act, having found no bar to register the document under any other law, registered the document.

Therefore, registration of document while discharging public duty by public officer cannot be said to be a fraudulent act and such act will not attract the definition of 'fraud' under Section 17 of the Indian Contract Act. Therefore, the act of the Registrar in registration of the documents cannot be declared as illegal and arbitrary since he registered the document while discharging his public duty.

At best, the petitioner, who is claiming that the sale deeds are invalid, tainted by fraudulent act of respondent Nos.14, 15, 16 and 17, such question of fact cannot be enquired into by this Court while exercising jurisdiction under Article 226 of the Constitution of India since it is a matter of evidence both oral and documentary to be adduced before the competent Civil Court. Hence, by applying the principle laid down by the High Court of Judicature at Madras in "R.Rajkumar v. The District Collector (W.P. (SR).No.58109 of 2017)", the writ petition is not maintainable.

One of the major contentions urged before this Court is that respondent Nos.14 and 15 deviated the procedure, executed document in favour of respondent No.16. Such deviation of decree passed by the Civil Court would not amount 'fraud'. Moreover, the Senior Civil Judge's Court issued a direction to execute document in terms of agreement of sale. Even before filing execution petition, competent persons executed document in favour respondent No.16, such act does not amount to 'fraud' or 'misrepresentation' to vitiate the entire transaction *prima facie*. Therefore, the contention of the petitioner that the sale deeds were executed by respondent Nos.14 and 15 in favour of respondent No.16 fraudulently is without any substance *prima facie*.

It is settled law that the document can be cancelled only by filing suit before the Civil Court under Section 31 of the Specific Relief Act by a person, who is a party to the document. If a third party intended to annul the document, he has to file a suit to declare the suit document as illegal and not binding on the plaintiff. Thus, the remedy open to the petitioner is to file a suit as held by the Apex Court in “**Suhrid Singh @ Sardool Singh v. Randhir Singh and others**”⁴, wherein the Apex Court while deciding the Court fee payable under Sections 6 and 7 of the Court Fee Act, 1870, incidentally held in para 6 as follows:

“Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' – two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non-est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided U/s.7(iv)(c) of the Act. Sec.7(vi)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The provision thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of section 7.”

Hence, in view of the law declared by the Apex Court in the judgment (referred supra), the remedy open to the petitioner is to file suit under Section 34 of the Specific Relief Act to declare the document as illegal and other consequential reliefs. As such, effective

⁴ 2010 SAR (Civil), page 402

and efficacious alternative remedy is available to the petitioner, and that the question of 'fraud' cannot be decided by this Court while exercising power under Article 226 of the Constitution of India since fraud is a mixed question of fact and law. Apart from that the petitioner did not disclose the details of fraud as mandated under Order VI Rule 4 of the Civil Procedure Code (for short "C.P.C."). Order VI Rule 4 of C.P.C. says that "in all cases in which the party pleading relief on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading." Though the rules under C.P.C. are not applicable to the writ petition, more details are required to decide the writ petition since the Courts are deciding the contentions of the parties based on the affidavit filed by the parties in the writ petitions, but not by conducting any process of trial or enquiry like suits.

In "***A.L.N.Narayanan Chettyar v. Official Assignee of the High Court, Rangoon***"⁵ it is held that "fraud of this nature, like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt."

The Division Bench of the Apex Court in "***Placido Francisco Pinto (D) by LRs and another vs. Jose Francisco Pinto and another***"⁶ reiterated the above principle.

Even assuming for a moment that there are sufficient pleadings as mandated under Order VI Rule 4 of the C.P.C., still such fact is to be proved by adducing evidence both oral and

⁵ AIR 1941 PC 93

⁶ Civil Appeal No.1491 of 2007 dated 30.09.2021

documentary by entering into witness box before the competent Civil Court.

One of the contentions of the petitioner before this Court is that respondent No.8, respondent Nos.14 and 15 playing fraud for mutating their names in the revenue records at the instance of respondent No.17, who is the then Minister for Animal Husbandry. Mere making entries in revenue records would not confer any title. Making an entry in the revenue records is only on receipt of intimation about the acquisition of title to immovable property as mandated under Section 4 (1) of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short “the Act”), after following necessary procedure under Section 5 (3) of the Act and Rule 18, 19 (1) and 5 (2) (a) to (e) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 (for short “the Rules”). It is not case of the petitioner that respondent No.8 deviated the procedure and mutated the names of respondent Nos.14 and 15. If that is the case, the Court is required to enquire into the procedure followed by respondent No.8, Tahsildar while mutating the names of respondent Nos.14 and 15. But here, the petitioner did not challenge the procedure followed by respondent No.8 for mutating the names of respondent Nos.14 and 15 in revenue records. Therefore, this Court is not required to adjudicate upon the validity of mutation based on the procedure prescribed under the Act. Hence, the act of respondent No.8 cannot be held to be ‘fraud’. However, if the petitioner succeeds in the Court proceedings, he is entitled to intimate the same to the Tahsildar concerned to make necessary changes in the revenue records in view of the language employed in Section 4 (1) of the Act, on receipt of such intimation, the Tahsildar is required to follow the

procedure Section 5 (3) of the Act read with Rule 5 (2) (a) to (e), Rule 19 (1) of the Rules and pass appropriate orders.

In the present case, appeals are pending before the District Court and in case the petitioner succeeds in those appeals, he is entitled to make necessary intimation for mutation of his name or for necessary alteration in the revenue records.

As per Section 6 of the Act, every entry in the record of rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of the Act. It is only *prima facie* title to the property and it is always subject to result of the suit in view of Section 8 (2) of the Act. Hence, I find no ground to grant any relief in the writ petition as it lacks merits. Consequently, the writ petition is liable to be dismissed.

In the result, the writ petition is dismissed relegating the petitioner to approach the Civil Court keeping in view the observations made in the earlier paragraphs. No costs.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

08.10.2021
Ksp