

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.NO.1160 OF 2014
& M.P.NO.1 OF 2014

P.M. Elavarasan ... Appellant/Petitioner

vs.

1. The Inspector General of Registration
No.100, Santhome High Road
Chennai-600 028.

2. The District Registrar (Chennai-South)
District Registrar Office
Jennis Road
Saidapet
Chennai-600 015.

3. The Sub Registrar
Sub Registrar Office
Virugambakkam
Chennai-600 092.

4. V.V.V. Nachiappan ... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 10.07.2014 in W.P.No.27012 of 2013 on the file of this Court.

Petition under Article 226 of the constitution of India,praying for the issuance of writ of mandamus, to Direct the third respondent to release the Sale Deed presented by the petitioner herein on 17.4.2013 upon assigning a Registration Number and to pass such other further order as this Hon'ble court may deem fit and proper in the facts and the circumstance of the case and thus render justice.

For Appellant : Mr.S.R. Rajagopal
for Swarnam J. Rajagopalan

For Respondents : Mr.P.S. Sivashanmuga Sundaram
for RR1 to 3

Mr.S. Thankasivan for R.4

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J)

This intra court appeal is directed against the order dated 10 July 2014 in W.P.No.27012 of 2013 whereby and whereunder, the learned Single Judge dismissed the writ petition filed by the appellant for a direction to the Sub Registrar to register the document.

2. The appellant presented a document before the Sub Registrar, Virugambakkam in respect of the property in Town Survey No.19 corresponding to old Survey No.158/1 part situated at Block No.6, Saligramam, Chennai. The Sub Registrar vide proceedings dated 22 May 2013 called upon the appellant to produce the original documents to prove his right over the property. The Sub Registrar in the subject proceedings also indicated that the document would be taken up for registration only after getting a report with regard to the genuineness of the patta. The appellant without challenging the proceedings dated 22 May 2013, filed a writ petition to direct the Sub Registrar to register the document.

3. Before the Writ Court, the fourth respondent filed a counter affidavit alleging acts of forgery and impersonation against the appellant and his vendor. The fourth respondent narrated the background facts including the complaint preferred by him before the Commissioner of Police and initiation of criminal proceedings on account of failure on the part of the police to register a complaint. The police ultimately registered a case in Crime No.400/2012 alleging acts of forgery. The fourth respondent contended that the appellant has no right in respect of the property and as such no direction could be issued to release the sale deed.

4. The learned Single Judge considered the background facts and arrived at a factual finding that the appellant approached the Court of equity with a pair of dirty hands. While dismissing the writ petition, the learned Single Judge directed the appellant to pay a sum of Rs.1 lakh by way of cost.

5. Heard the learned counsel for the respective parties.

6. The order passed by the learned Single Judge and the materials available on record clearly shows that there are proceedings both civil and criminal with respect to the property in Town Survey No.19 corresponding to old Survey No.158/1 part. The appellant instead of complying with the direction issued by the Sub Registrar filed a writ petition under the pretext that the document has already been registered. The prayer was to direct the Sub Registrar to release the sale deed already registered by him. The written instructions obtained by the learned Special Government Pleader shows that the Sub Registrar has not registered the document so far and it is still kept as a pending document. The learned Single Judge was therefore correct in dismissing the writ petition with cost.

7. There is no dispute that the appellant presented the sale deed for registration before the Sub Registrar, Virugambakkam. The Sub Registrar is expected to consider the document in accordance with the Registration Act. In case the Registrar is of the view that the document cannot be registered, the Law requires him to pass an order on merits. The aggrieved is entitled to a statutory remedy under the Registration Act. We are therefore of the view that it is for the Sub Registrar to pass appropriate orders in the matter taking into account the background facts.

8. The Sub Registrar, Virugambakkam is directed to consider the sale deed produced by the appellant for registration. While passing orders, it is open to the Sub Registrar to consider the background facts including the order passed by the District Registrar (South), Chennai, dated 10 October 2012. We make it clear that by directing the Sub Registrar to pass orders as per law, it cannot be construed that the appellant is entitled to register the document. It is for the Sub Registrar to decide the issue. We also make it clear that before passing orders, necessarily notice should be issued to the fourth respondent by Registered Post and he should also be given an opportunity of hearing. Similarly, a copy of the order passed by the Sub Registrar should also be communicated to the fourth respondent by registered post. The appellant is given three weeks time from today to deposit the amount of cost as indicated in the order dated 10 July 2014 in W.P.No.27012 of 2013.

9. The intra court appeal is disposed of with the above direction. Consequently the connected MP is closed. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Inspector General of Registration
No.100, Santhome High Road
Chennai-600 028.
2. The District Registrar (Chennai-South)
District Registrar Office
Jennis Road
Saidapet
Chennai-600 015.
3. The Sub Registrar
Sub Registrar Office
Virugambakkam
Chennai-600 092.
4. The Caneer Institute (WIA), Chennai
5. The Government Higher Secondary
for Blind, Karaiyyan chavadi,
Poonamallee, Ch-56
6. Vidya sagar, No.1 Ragyt Road,
Kotturpuram, Ch-85
7. YRG Centre for AIDS Research and
Education Chennai.

+lcc to Mr.Swarnam J.Rajagopalan, Advocate sr.47387
+lcc to The Government Pleader Sr.47620
+lcc to M/s.S.Thangasivan, Advocate Sr.47733

W.A.No.1160 of 2014

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srg 30.09.2015