

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2015

CORAM

THE HONOURABLE Mr. JUSTICE T.S. SIVAGNANAM

W.P.No.35197 of 2014
and
M.P.Nos.1 and 2 of 2014

1.G.Durairaj
2.N.Adiapatham
3.G.Arumugam Petitioners

vs.

1.The District Registrar,
Chennai South,
Saidapet, Chennai-600 015.
2.The Sub Registrar,
Alandur, Chennai-600 016. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue Writ of Certiorarified Mandamus calling for the records in No.1 of 2014 dated 22.8.2014 on the file of the 2nd respondent, viz., The Sub Registrar, Alandur, Chennai-600 016 and quash the same with a consequential direction to the second respondent to receive the Deed of Partition along with the Stamp Duty and Registration Charges, register and return the same within the time frame fixed by this Court.

For Petitioners : Mr.P.Gopalan

For Respondents : Mr.P.Gunasekaran
Government Advocate

ORDER

Heard Mr.P.Gopalan, learned counsel appearing for the petitioner and Mr.S.Gunasekaran, Government Advocate appearing for the respondents and perused the materials placed on record as well as the counter-affidavit filed by the 2nd respondent.

2. The petitioners seeks to quash the impugned proceedings dated 22.8.2014 passed by the 2nd respondent refusing registration of the Partition Deed presented for registration. The reason assigned for refusing is, there is a complaint pending at the instance of V.Sivabooshanam, who is said to be the son of T.M.Vaithialinga Mudaliar, who is one of the vendor of the petitioners.

3. The facts which are necessary for disposal of the writ petition are that the lands comprised in Pymash No.516, Old S.Nos.256/6 and 256/10, Town Survey Nos.107 and 111/2 situated in Adambakkam village, Alandur Taluk, Kancheepuram District and other lands belonged to the petitioners' vendor T.M.Vaithialinga Mudaliar and others. The said T.M.Vaithialinga Mudalir is said to have obtained Release Deed from his younger son T.V.Eswaran under Deed of Release, registered as Document No.3876/1985, dated 06.12.1985. In respect of other two sons, viz., V.Sivabooshanam and V.Krishnamurthy, they are said to have executed Power of Attorney infavour of their father T.M.Vaithialinga Mudaliar, which are registered documents bearing Document Nos.391/1985, dated 23.12.1985 and 207/1986, dated 07.8.1986 respectively.

3.1. It is further stated that the daughters of T.M.Vaithialinga Mudalir, viz., V.Santhakumari and V.Rathinakumari have also executed Power of Attorney infavour of their father T.M.Vaithialinga Mudaliar registered as Document Nos.55/1963 and 89/1975 respectively for dealing with the properties. The said T.M.Vaithialinga Mudaliar on his behalf and as Power Agent of his sons and daughters, entered in to an agreement of sale with the petitioners on 06.6.1985. After the receipt of the entire sale consideration, sale deeds were executed infavour of the petitioners vide Document Nos.2985/1986, dated 22.9.1986 on the file of Sub Registrar, Alandur. Now the petitioners have executed Deed of Partition among themselves and presented the same for registration before the 2nd respondent and the 2nd respondent had refused to register the document stating that the son of T.M.Vaithialinga Mudaliar, namely V.Sivabooshanam has lodged a police complaint and enquiry is in progress and therefore, the document cannot be accepted for registration.

4. It is seen that based on the complaint given before the 1st respondent stating that a fraudulent transaction has taken place, the 1st respondent is said to have conducted an enquiry and a direction has been issued to register a police complaint and the matter is now under investigation before the Deputy Commissioner of Police, Central Crime Branch. However, it is to be noted that sale deed was executed infavour of the petitioners in 1986 and it is a registered document. Power of Attorney said to have been executed by the sons

of T.M.Vaithialinga Mudaliar are also registered documents bearing Documents Nos.391/1985 and 207/1986 respectively. One of the son V.Sivabooshanam is the complainant in the criminal complaint as well as before the 1st respondent. So far as the other transactions, viz., Release Deed executed by T.V.Eswaran infavour of T.M.Vaithialinga Mudaliar and the Power of Attorney executed by the daughters of T.M.Vaithialinga Mudaliar, which are also registered documents, registered as Document Nos.55/1963 and 89/1975 respectively and there is no dispute over the same.

5. On perusal of the counter-affidavit filed by the 2nd respondent, it is seen that the complaint is not one as impersonation but allegation of forgery.

6. When T.M.Vaithialingam Mudaliar has signed in the sale deed in the presence of the Sub Registrar, the onus is heavy on the complainant to prove that it is a forged document, more particularly, 19 signatures were affixed by T.M.Vaithialinga Mudaliar before the Sub Registrar in the presence of two witnesses. Be that as it may, the question would be as to whether the 2nd respondent can receive the Deed of Partition for registration. Admittedly, as on date, there is no Civil proceedings pending challenging the sale deed executed infavour of the petitioners in the year 1986.

7. The Honourable First Bench of this Court in the case of Latif Estate Line India Limited v. Hadeeja Ammal and others, reported in 2011 (2) CTC 1, held that in cases where transaction has been completed and sale deed has been executed and the sale has become absolute, it can be cancelled only at the instance of the transferor by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons. Therefore, as long as the sale deed executed infavour of the petitioners on 22.9.1986, registered as Document No.2985/1986 has not been cancelled by a decree of cancellation passed by a Civil Court, the said sale deed continues to be valid. That apart, complaint has been given by the complainant alleging that his signatures have been forged in the Power of Attorney executed infavour of his father. Admittedly, the document, viz., the Power of Attorney is also a registered document bearing Document No.391/1985, dated 23.12.1985. Nothing has been placed on record to show as to whether any proceedings are pending to cancel the said Power of Attorney. In such circumstances, the 2nd respondent has committed a serious error in passing the impugned order and the impugned order is held to be unsustainable.

8. Accordingly, the writ petition is allowed and the impugned order of the 2nd respondent dated 22.8.2014 is quashed. The 2nd respondent is directed to accept the Partition Deed for registration

and register the same, if other wise in order and release the same. It is made clear that mere registration and release of the Partition Deed by the 2nd respondent will not hamper the investigation now said to be pending with the Deputy Commissioner of Police, Central Crime Branch for enquiry and will also not prejudice the right of V.Sivabooshanam in proceeding with his complaint in accordance with law. No costs. Consequently, M.P.Nos.1 and 2 of 2014 are closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar

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To

1.The District Registrar,
Chennai South,
Saidapet, Chennai-600 015.

2.The Sub Registrar,
Alandur, Chennai-600 016.

+1 cc to M/s.P.Gopalan, Advocate SR.No.6083

+1 cc to the Govt. Pleader, High Court, Madras SR.No.6353

W.P.No.35197 of 2014

GP(CO)
JK 21/02/15

सत्यमेव जयते

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