

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No. 30203 of 2013

and

M.P.No.1 of 2013

K.Umadevi

... Petitioner

Versus

1. The Sub-Registrar,
having office at
Sub Registrar Office,
Uthangarai Taluk,
Krishnagiri District.

2. The District Registrar,
having office at
District Registrar Office,
Uthangarai Taluk,
Krishnagiri District.

3. The Sub-Inspector of Police,
Uthangarai Police Station,
Uthangarai Taluk,
Krishnagiri District.

4. G.Vimala

5. Rathinam @ Gurusamy

(respondents 4 & 5 are impleaded as per
order dated 04.12.2013 in MP.No.2/2013
in W.P.No.30203 of 2013)

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified mandamus and call for the entire records of the respondents 1 and 2 and quash the same in SE.MU.NO.P.11/2013 dated 26.07.2013 and appeal No.2/2013 dated 11.10.2013 and direct the 1st respondent to register the petitioner's sale deed dated 26.04.2013 assigned as pending 11/2013.

For Petitioner : Mr. M.Balasubramanian

For Respondents 1 to 3 : Mr. R.Vijayakumar,
Additional Government Pleader.

For 4th Respondent : Mr.R.Srinivasalu

For 5th Respondent : P.Muthusamy.

ORDER

Heard Mr. M.Balasubramanian, learned counsel for the petitioner and Mr. R.Vijayakumar, learned Additional Government Pleader appearing for the respondents 1 to 3 and Mr. R.Srinivasan, learned counsel appearing for the 4th respondent and Mr.P.Muthusamy, learned counsel for the appearing for the fifth respondent, who is now dead.

2. Though sufficient opportunity was granted to the learned counsel for the deceased fifth respondent to furnish the details of the legal heirs to the counsel for the petitioner to implead them, the same has not been done and therefore, this court is not inclined to adjourned the matter further and inclined proceeded as such considering the relief sought for in this writ petition. The petitioner seeks to quash the impugned proceedings of the Sub-Registrar, Uthangarai, dated 26.07.2013, as confirmed in appeal by the District Registrar, Kirshnagiri, the second respondent herein by order dated 11.10.2013.

3. The facts which are necessary for the disposal of the writ petition is that the petitioner is said to have purchased the property in question together with superstructure and the said sale deed was presented for registration and assigned pending document No.11/2013, on the file of the first respondent on 26.04.2013. The petitioner is said to have presented the document for registration along with his vendor, who is fourth respondent herein and the petitioner is said to have remitted stamp duty and the registration charges by way of Demand Draft.

4. The learned counsel for the petitioner submits that the petitioner's vendor namely, the fourth respondent has clear title over the property pursuant to a settlement deed, dated 11.02.2009 duly registered as document No.515/2009 on the file of the first respondent executed by Mr. Rathinam @ Gurusamy, the fifth respondent, who is the father of the fourth respondent.

5. The grievance of the petitioner is that though the sale deed presented by him was treated as a pending document, without notice and without enquiry, the Sub-Registrar unilaterally rejected the registration of the document and refused to register the same, on the ground that the fifth respondent has cancelled the settlement deed, dated 11.02.2009, executed in favour of the fourth respondent.

6. The learned counsel for the petitioner submitted that the order passed by the first respondent is clearly in violation of the procedure contemplated under Section 71 of the Registration Act, 1908, and without issuing any notice as required and thus the order is in violation of the principles of natural justice. It is further submitted that the appeal petition filed by the petitioner was also rejected by an erroneous order which is a verbatim replication of the order passed by the first respondent and without taking into consideration the grounds raised by the petitioner in his appeal petition.

7. Heard the learned counsel for the fourth respondent and the learned counsel for the fifth respondent, who is at present no more, on the above submission.

8. On a perusal of the impugned order, it is seen that the impugned order was passed without conducting any enquiry. Section 71 of the Registration Act, states that "every Sub-Registrar refusing to register the document except on the ground that the property to which it relates is not situated within his jurisdiction, shall make an order of refusal and record his reasons for such order". In the instant case, the document in question was presented for registration on 26.04.2013 and assigned pending document No.11/2013. Therefore, while passing an order of refusal to register a document, the principles of natural justice requires that the parties to the document have to be afforded an opportunity. Admittedly, neither the petitioner, nor the fourth respondent were put on notice. The reason assigned by the first respondent, refusing to register is that the fifth respondent has executed a document and cancelled the settlement deed. Therefore, it was all the more necessary to issue notice to the fifth respondent, because the stand taken by the fifth respondent appears to have been the reason for rejection of the registration of the same. However, this procedure has not been followed by the first respondent while passing the impugned order. When these issues were placed before the second respondent/the Appellate Authority, the second respondent merely confirmed the order passed by the first respondent, without affording opportunity to the proper and necessary parties. Therefore, the order passed by the second respondent also suffers from violation of principles of natural justice. Therefore, both the impugned orders are liable to be set aside on the above technical grounds.

9. The learned counsel for the fifth respondent submitted that a civil suit is pending and the property has already been mortgaged by the fifth respondent. However, this matter need not be adjudicated at this juncture, since this Court is satisfied that the impugned order is in the violation of the principles of natural justice and the parties have to be heard in the matter before a decision is taken.

10. For the above reasons, the impugned orders are liable to set aside. Accordingly, the writ petition is allowed and the impugned orders are quashed and the matter is remanded to the first respondent for fresh consideration. The first respondent shall issue fresh notice to the petitioner, fourth respondent and the legal heirs of the fifth respondent and after hearing all the parties in person and affording them fair and reasonable opportunity, the first respondent shall pass a speaking order on merits and in accordance with law. The above directions shall be complied with, within a period of 3 months, from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

True Copy

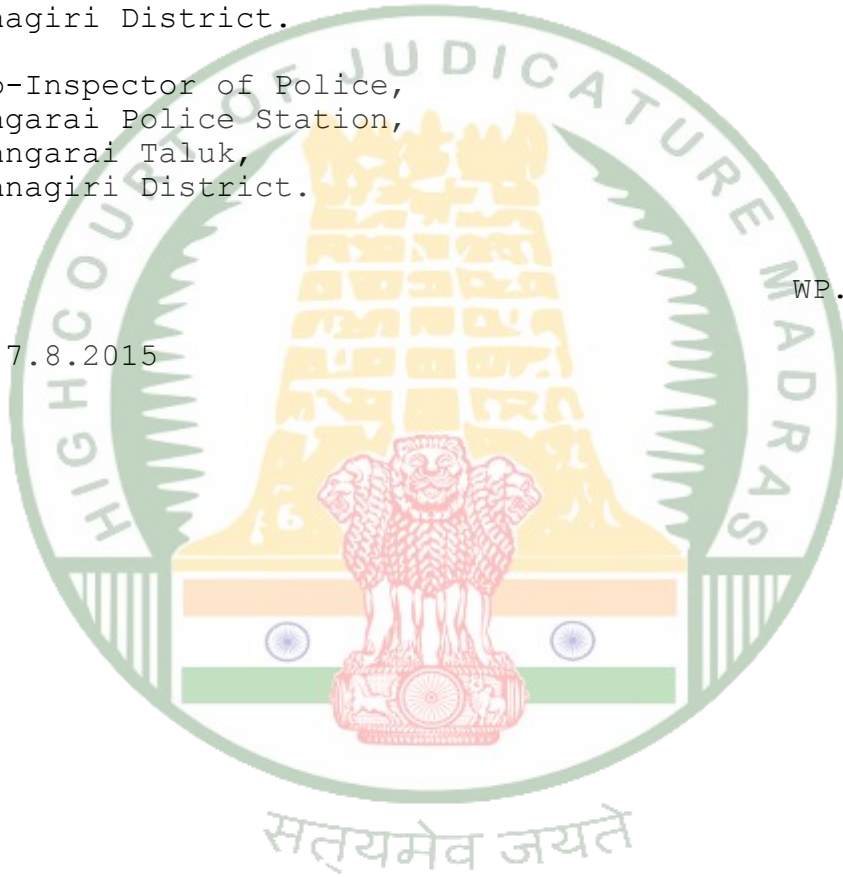
Sub Assistant Registrar

mrp/smi
To

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having office at
Sub Registrar Office,
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2. The District Registrar,
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Rj (co) pmk.7.8.2015



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