



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.10.2015

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD).No.19637 of 2015

M.K.Haja Najumudeen

... Petitioner

Vs.

The Sub Registrar
O/o.The Sub Registrar Office,
Thiruvadanai,
Ramanathapuram District.

... Respondent

This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in his proceedings No.Nil, dated 26.10.2015 and quash the same as illegal and consequentially to direct the respondent to register and release the sale deed, dated 26.10.2015 within a period that may be stipulated by this Court.

For petitioner	: Mr.H.Mohammed Imran
For Respondent	: Mr.K.Maheshraja
	Government Advocate

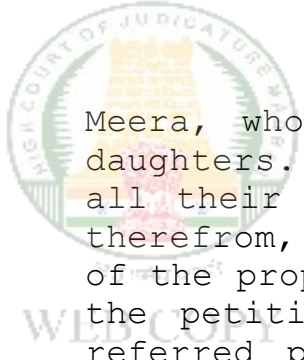
ORDER

This Writ Petition has been filed praying for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in his proceedings No.Nil, dated 26.10.2015 and quash the same as illegal and consequentially to direct the respondent to register and release the sale deed, dated 26.10.2015 within a period that may be stipulated by this Court.

2. Mr.K.Maheshraja, learned Government Advocate takes notice for the respondent.

3. By consent, the Writ Petition itself is taken up for final disposal.

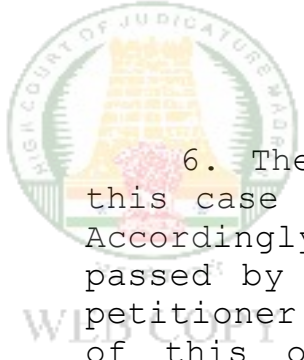
4.In the affidavit filed in support of the Writ Petition, it has been averred that the property in Survey No.269/8 to an extent of 6.6855 Acres, situated at Pulliyal Village, Thidakkottai group, Pulliyal Panchayat, Devakkottai Union, Thiruvadanai Sub division, Karaikudi Rd belonged to the petitioner's father viz., Mr. M.Kader



Meera, who died intestate leaving behind his wife, 3 sons and 4 daughters. The wife and daughters of the deceased orally gifted all their shares as Hiba to the three sons in the year 2000 and therefrom, the three sons are in absolute possession and enjoyment of the property. The petitioner is one among the three sons. Since the petitioner and his two brothers indented to sell the above referred property, they presented a sale deed, dated 26.10.2015 before the respondent herein. However, the respondent by his impugned proceedings No.Nil, dated 26.10.2015 has refused to register the sale deed on the ground that the legal heir certificate is not produced. The reason for non registration of the sale deed is illegal. The registering authority should not insist upon the petitioner for producing the legal heir certificate. As a matter of fact, the respondent is not entitled to go into the title of the dispute and the same is without jurisdiction. In fact in the year 2013, the petitioner and his two brothers sold a portion of the property in Survey No.269/8 in the year 2013 to a third party in and by a sale deed, dated 29.08.2013. When the said sale deed was presented before the respondent for registration, the respondent had insisted for Legal Heir certificate. However, subsequently, the respondent had accepted the explanation given by the petitioner and his holder and registered the said sale deed vide Document No.1327. When a portion of the very same property was registered in the year 2013 without asking for the legal heir certificate. Now the respondent cannot insist the petitioner to produce legal heir certificate. In fact, there is no rival claim. No complaint whatsoever was received by the respondent from any quarters in respect of the property for which the registration is sought for. The patta also stands in the name of the petitioner's father. Nevertheless, the respondent has illegally passed the impugned order. The properties which are situated adjacent to the petitioner's property, within the same survey number, were also sold like the property in question and the same was also duly registered and released. Hence, the impugned order is illegal as the respondent has no authority to insist for the legal heir certificate.

5. When the matter is taken up for consideration, the learned counsel for the petitioner relied upon the judgement of this Court in W.P.(MD)No.14609 of 2013 dated 27.06.2014 wherein it has been held as follows:-

"5.As contended by the learned counsel for the petitioner, the respondent can refuse to register the documents only on the grounds mentioned under Rule 55 of the Registration Rules and not otherwise. In the instant case, in my considered opinion, the impugned order was passed by the second respondent directing the petitioner to produce the legal heir certificate of his vendors, who are the legal heirs of one Kalimuthu, who died without any issues and it is not legally sustainable and hence, the impugned order is liable to be set aside."



6. The said judgment is squarely applicable to the facts of this case also. Hence, the writ petition is liable to be allowed. Accordingly, writ petition is allowed and the impugned order passed by the respondent, dated 26.10.2015 is set aside and the petitioner is directed to give a representation along with a copy of this order and on receipt of the copy of the order, the respondent is directed to conduct enquiry by affording opportunity of personal hearing to the petitioner and the mother and sister of the petitioner and pass appropriate orders with regard to registration of the documents, within a period of four weeks from the date of receipt of a copy of this order. No Costs.

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar/-

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To

The Sub Registrar

O/o.The Sub Registrar Office,

Thiruvadanai,

Ramanathapuram District.

+1CC to Mr.Ajaml Associates Sr.No.63675

+1CC to Special Government Pleader Sr.No.63876

GJM/SKS/RR/16.12.2015-3P-4C

W.P (MD) .No.19637 of 2015

29.10.2015