

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.10284 of 2016

B.Nambidasan

.. Petitioner

Vs.

1.The Inspector General of Registration,
Office of the Inspector General
of Registration,
Santhome High Road,
Chennai-4.

2.The Sub Registrar,
Madukkarai,
Coimbatore District.

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus, directing the second respondent herein to entertain the Settlement deed to be executed by the petitioner to and in favour of his brother B.Nambiselvan in respect of his half share in the property namely vacant land comprised in Survey No.237/5, bearing New Site No.7, Old No.32, situated in Ettimadai Village, measuring to an extent of 1750 sq.ft. and another vacant land comprised in Survey No.237/5 bearing New Site No.12, Old No.37, Situated in Ettimadai Village measuring an extent of 1750 Sq.ft. totalling 3500 Sq.ft. of vacant land and another extent of land measuring to an extent of 1750 sq.ft. comprised in Survey No.237/5 bearing New Site No.8, Old No.33, situated in Ettimadai Village, measuring to an extent of 1750 sq.ft. and another extent of land measuring to an extent of 1750 sq.ft. comprised in Survey No.237/5 bearing New site No.12, Old No.37, situated in Ettimadai Village, measuring to an extent of 1750 sq.ft. without insisting on the original sale deed dated 12.9.2005 bearing document No.2619 of 2005 registered in the office of the Sub Registrar, Madukkarai, the second respondent herein pursuant to the circular dated 25.4.2012 issued by the first respondent herein.

For Petitioner : Mr.T.Sivakumar

For Respondents : Mr.V.Jayaprakash Narayanan,
Spl. Govt. Pleader

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition for a mandamus, directing the second respondent herein to entertain the Settlement deed to be executed by him to and in favour of his brother B.Nambiselvan in respect of his half share in the property namely vacant land comprised in Survey No.237/5, bearing New Site No.7, Old No.32, situated in Ettimadai Village, measuring to an extent of 1750 sq.ft. and another vacant land comprised in Survey No.237/5 bearing New Site No.12, Old No.37, situated in Ettimadai Village, measuring to an extent of 1750 sq.ft. totalling 3500 sq.ft. of vacant land and another extent of land measuring to an extent of 1750 sq.ft. comprised in Survey No.237/5, bearing New Site No.8, Old No.33, situated in Ettimadai Village, measuring to an extent of 1750 sq.ft. and another extent of land measuring to an extent of 1750 sq.ft. comprised in Survey No.237/5 bearing New site No.12, Old No.37, situated in Ettimadai Village, measuring to an extent of 1750 sq.ft. without insisting on the original sale deed dated 12.9.2005 bearing document No.2619 of 2005 registered in the office of the Sub Registrar, Madukkarai, the second respondent herein pursuant to the circular dated 25.4.2012 issued by the first respondent herein.

3. The case of the petitioner, in brief, is as follows:-

(a) The petitioner is working as Chief Marine Engineer in Great Ship, Mumbai. During the course of his employment, he purchased various properties jointly in his name and in the name of his wife N.Sasikala. He has also purchased a property in his name jointly along with his wife N.Sasikala viz., vacant land comprised in Survey No.237/5, bearing New Site No.7, Old No.32, situated in Ettimadai Village, measuring to an extent of 1750 sq.ft. and another vacant land comprised in Survey No.237/5 bearing New Site No.12, Old No.37, situated in Ettimadai Village, measuring to an extent of 1750 sq.ft. totalling 3500 sq.ft. of vacant land and another extent of land measuring to an extent of 1750 sq.ft. comprised in Survey No.237/5 bearing New Site No.8, Old No.33, situated in Ettimadai Village, measuring to an extent of 1750 sq.ft. and another extent of land measuring to an extent of 1750 sq.ft.

comprised in Survey No.237/5 bearing New site No.12, Old No.37, situated in Ettimadai Village, measuring to an extent of 1750 sq.ft. under a sale deed dated 12.9.2005 bearing document No.2619 of 2005 registered in the office of the Sub Registrar, Madukkarai, the second respondent herein.

(b) Subsequently, there is a dispute between the petitioner and his wife and the petitioner is living separately whereas, his wife is also living separately along with her parents. While his wife left the matrimonial home, she took away all the valuable documents viz., original sale deeds of lands, which the petitioner has purchased in various places viz., Pallikaranai, Akkarai of Chennai, Ettimadai, Thondamuthur and Zamin Kaliyapuram at Coimbatore. She has also taken away 130 sovereigns of gold jewels and 250 grams of gold biscuits and all the original educational certificates of the petitioner. Therefore, the petitioner has given a police complaint dated 23.6.2015 to the Deputy Commissioner of Police, Adyar Range and his wife has given a statement on 25.6.2015 before the police by admitting that she is having the custody of the original documents mentioned above and she promised to return the valuable documents including the documents pertaining to the property purchased by the petitioner. But, so far, she has not returned the original sale deed to the petitioner.

(c) Earlier, the petitioner had given a power of attorney in favour of his wife under General Power of Attorney deed dated 28.8.2009 registered as document No.1400 of 2009 and due to the illegal and indifferent attitude of his wife, later, he has cancelled the same vide document No.53 of 2016 dated 24.2.2016. In these circumstances, apprehending that his wife may create encumbrance over the said property as she is having possession of the original documents, the petitioner is intending to execute a settlement deed in respect of his half share in favour of his brother B.Nambiselvan. However, the petitioner is not having the original sale deed dated 12.9.2005 bearing document No.2619 of 2005 in respect of the property in question. Therefore, he sent a legal notice through his counsel on 25.2.2016 requesting the second respondent not to entertain any sale or settlement deed to be presented by the his wife in respect of her half share in the property. But, there was no reply from the second respondent.

(d) Further, when the petitioner presented the settlement deed executed by him in favour of his brother before the second respondent, the second respondent refused to register the same stating that unless and until the original sale deed is presented, the document cannot be received. Hence, the petitioner has come up with the present writ petition for the relief set out earlier.

4. I have heard the learned counsel appearing for the petitioner and the learned Special Government Pleader, who has taken notice on behalf of the respondents.

5. Considering the facts and circumstances of the case and considering the submissions made on either side, I am of the opinion that the second respondent cannot refuse to receive the document and after receiving the same, as per Section 72 of the Registration Act, he can either register the document or refuse to register the same.

6. Accordingly, the present writ petition is disposed of, with a direction to the second respondent to receive the settlement deed to be submitted by the petitioner and pass appropriate orders, either registering the said document or refusing to register the same, in accordance with Section 72 of the Registration Act, within a period of four weeks from the date of receipt of a copy of this order. No costs.
sbi

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Inspector General of Registration,
Office of the Inspector General
of Registration,
Santhome High Road,
Chennai-4.

2.The Sub Registrar,
Madukkarai,
Coimbatore District.

+ 1 cc to Mr.T.Sivakumar, Advocate Sr 17298

+ 1 cc to The Govt.Pleader, Sr 17720

KR/22/3/16

W.P.No.10284 of 2016