

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 31.03.2016

Pronounced on : 02-06-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 13977 of 2015
and

M.P. Nos. 1 and 2 of 2015

K. Senthil ... Petitioner

Versus

1. The Sub-Registrar
Ganapathy Sub-Registrar Office
Ganapathy
Coimbatore

2. G. Kavitha
3. A. Vijayakumar
4. V. Manimekalai
5. P. Balakrishnan
6. P. Uthirasamy
7. K. Sekar
8. N. Kulandaisamy
9. C. Jeganathan

(Respondents 2 to 9 were impleaded as party
respondents as per the order dated 31.03.2016
made in WMP No. 55 of 2016 in WP No.
13977 of 2015)

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Writ of Certiorarified Mandamus to call for the records relating to the impugned Letter dated 10.04.2015 in Na.Ka.No.234/2015 issued by the respondent and quash the same and consequently direct the respondent to accept the General Power of Attorney dated 09.04.2015 executed by the petitioner in favour of A. Shanmugam and register the same.

For Petitioner : Mr. K. Rajasekaran

For Respondents : Mr. V. Jayaprakash Narayanan
Special Government Pleader for R1

Mr. G. Sankaran for R2

ORDER

The petitioner calls in question the validity of the letter dated 10.04.2015 sent by the first respondent by which the first respondent refused to register the power of attorney deed dated 09.04.2015 presented by the petitioner for registration in favour of one Arumugam.

2. The facts which led to filing of the present writ petition and which are germane and necessary for disposal of this writ petition are as follows:-

(i) The petitioner is the owner of several lands situate in Vilankurichi Village, Coimbatore North Taluk, including the land in Survey No.5/B1 measuring 3.63 acres in the said Village. The above said land was in peaceful possession and enjoyment of the petitioner and his family. While so, one Jaganathan and P. Balasubramaniam attempted to disturb the peaceful possession and enjoyment of the property which resulted in filing a suit in O.S. No. 1728 of 1996 by the petitioner's father before the District Munsif Court, Coimbatore praying for a Declaration and permanent injunction. The said suit was decreed on 04.12.1996 and it reached finality inasmuch as it was not appealed against.

(ii) As the petitioner and his family have been in continuous possession and enjoyment of the above said land, the petitioner's father Mr. Kadhivelu submitted an application dated 10.11.2011 to the Tahsildar, Coimbatore North Taluk for issuing patta in his favour. As there was no response, the petitioner's father filed writ petition No. 1313 of 2012 before this Court for a Mandamus. By order dated 18.01.2012, this Court directed the respondent therein to consider his request for grant of patta. However, when the enquiry was to be conducted by the Tahsildar North Taluk, Coimbatore, as directed by this Court, the petitioner's father died on 29.01.2012. Therefore, as a legal heir, the petitioner participated in the enquiry conducted by the Tahsildar North Taluk, Coimbatore and by proceedings dated 27.03.2012, patta was granted to the petitioner in respect of the land in Survey No.5/B1. Thereafter, the Special Tahsildar, Coimbatore also issued a certificate dated 08.05.2012 confirming the right of the petitioner over the land in Survey No.5/B1.

(iii) According to the petitioner, due to his pre-occupation, he could not maintain the said land and therefore, he has executed a power of attorney deed dated 09.04.2015 appointing one Arumugam, Son of Aarukutti as his power agent and it was presented before the first respondent on 10.04.2015 for registration. The first respondent, instead of registering the power of attorney sent the impugned letter dated 10.04.2015 directing the petitioner to clear the encumbrances existing in the land in Survey No.5/B1 and to get an appropriate declaratory decree from the Civil Court declaring his right. Challenging the letter dated 10.04.2015 of the first respondent, the petitioner has come up with this writ petition.

3. Originally, the petitioner has filed this writ petition only against the first respondent herein. Subsequently, the respondents 2 to 9 were impleaded and they are also represented by a counsel.

4. The learned counsel for the petitioner would contend that the first respondent is not justified in refusing to register the power of attorney on the ground that joint patta has been issued in favour of the petitioner and others and he could not trace the title of the petitioner to the land in Survey No.5/B1. The learned counsel for the petitioner would vehemently contend that by reason of registration of the deed of power of attorney, the title of the property will not be transferred. Rather, the power of attorney is only an authorisation to do certain act and deeds. According to the counsel for the petitioner, only Rule 162 of the Tamil Nadu Registration Rules (hereinafter referred to as The Rules) empowers the registering authority to refuse registration of a document on the heads mentioned therein. In this case, none of the heads stipulated in Rule 162 is attracted and therefore the first respondent is not justified in refusing to register the deed of power of attorney submitted by the petitioner for registration. In any event, the first respondent has gone into the question of title of the property in favour of the petitioner to refuse registration of the general power of attorney deed presented by him, which is legally impermissible. In this context, the learned counsel for the petitioner relied on Rule 55 of The Rules, which prohibits the registering authority to refuse registration. -

"55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the existing party had no right to execute the document, but, he is bound to consider objections raised on any of the grounds stated below:-

(a) that the parties appearing or about to appear before him are not the persons they profess to be;

(b) that the document is forged

(c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity

(d) that the executing party is not relaly dead, as alleged by the party applying for registration or

(e) that the executing party is a minor or an idiot or a lunatic.

5. By relying on Rule 55, the learned counsel for the petitioner submitted that the reasons assigned by the first respondent for not registering the document viz., power of

attorney deed is that in between 02.12.1995 and 09.04.2015, there are 50 encumbrances found to exist in respect of this land and therefore, the power of attorney cannot be registered. This reason assigned by the first respondent is not in consonance with Rule 55 of the Tamil Nadu Registration Rules and therefore the refusal on the part of the first respondent to register the power of attorney deed is without authority of law.

6. The learned counsel for the petitioner also relied on Rule 22 of the Tamil Nadu Registration Rules which provides for conducting an enquiry. Rule 22 of the Rules reads as follows:-

"22. Every document shall before acceptance for registration be examined by the registering officer to ensure that all the requirements prescribed in the Act and in these rules have been complied with. If there is any infirmity in the presentation of a nature which can be remedied, the registering officer shall give the party such information as may be necessary and return the fees and the document (in accordance with Rule 27) with a view to the document being presented again in due form. For instance, in cases such as those mentioned below he should explain the defect to the presentation if the document is presented in the wrong office. If an agent has come without a power of attorney or without such a power as the Act requires, if the description of the property is either insufficient for purposes of identification or does not fulfil its requirements of rules 16 to 18, if the document is not accompanied by a translation or by copy of a map when such translation copy is necessary, if there are unattended interlineations, alterations, erasures or blanks, which the registering officer should be attested by the initials or signature of the executants, if the date of execution is not given in the document, or if it is anterior to the date of purchase of the stamp paper on which the document is written, or if the date is given according to both the British and the Indian calendars and these dates do not tally the action of the registering officer in this respect shall be confined to advise and he shall not himself alter the document in any manner.

7. By relying on Rule 22 of the Rules, the learned counsel appearing for the petitioner would contend that none of the infirmities or deficiencies contemplated in Rule 22 exist in this case and therefore, the first respondent ought not to have refused to register the general power of attorney deed presented by the petitioner for registration.

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8. The learned counsel for the petitioner also invited my

attention to Rule 26 (ii) of The Rules wherein it is stated that if a survey number of a sub-division entered to a document is not found in the subsidiary indexes or settlement registers, the registering officer, shall, if necessary, make a reference to the revenue department. In this case, the first respondent, without complying with Rule 26 (ii) of the Rules has passed the impugned order directing the petitioner to approach the Civil Court and to get a declaratory decree. According to the learned counsel for the petitioner, the first respondent therefore cannot deny registration of the power of attorney deed by sending the impugned letter and it is not in consonance with the Tamil Nadu Registration Act and the Rules made thereunder.

9. The learned counsel for the petitioner also attacked the impugned letter of the first respondent on the ground that the first respondent has no jurisdiction or authority to direct the petitioner to approach the Civil Court and to get his title declared. By issuing such direction, the first respondent has exceeded the scope and ambit of the provisions of the Tamil Nadu Registration Act and Rules. In this context, the learned counsel for the petitioner relied on the decision of this Court in the case of (M. Gopinathan and others vs. The Sub-Registrar, Gudalur, The Nilgiris District) reported in (2004 (3) Law Weekly 185 wherein it was held that the registering authorities are not bound to consider the consequences of a particular transaction. The registering authority has to satisfy the conditions governing the execution of the document and not the right of the party to deal with the property. It was further held that law is well settled that even if any document alienating any property is registered, it would not confer right upon the alienee unless the alienor had any right. In other words, purchaser cannot get a better title than that of the vendor.

10. On the contrary, the learned Special Government Pleader appearing for the first respondent, by relying on the counter affidavit of the first respondent, would contend that the averment of the petitioner that he participated in the enquiry conducted by the Tahsildar and thereafter patta was issued in his name is absolutely incorrect. The patta No.660 in respect of the property stands jointly in the name of the petitioner and 11 others in which the name of the petitioner is indicated in serial No.4 thereof. Therefore, the petitioner cannot claim exclusive right, interest and title over the entire extent of the property measuring 1.47.5 square feet when the joint patta in respect of the property stands in the name of 12 persons. Further, the encumbrance certificate obtained for the period from 02.12.1995 to 09.04.2015 disclose 50 subsisting encumbrance over the said land. Therefore, there is no clarity as to whether the petitioner has any right to execute the power of attorney in favour of his agent Mr. A. Arumugam. Further, the decree and judgment said to have been obtained in O.S. No. 1485 of 2009 by the petitioner's father is

an exparte decree and it was not a contested decree. Moreover, the petitioner's father has not filed the suit in his individual capacity but as a Hereditary Manager of Kovilpalayam Choultry. Therefore, the decree and judgment passed in the suit will not confer any title to the petitioner or his father. IN such circumstances, if the power of attorney presented by the petitioner is entertained and registered, it will amount to nullifying the encumbrances already subsisting in the property. The learned Special Government Pleader specifically contends that even though the registering authority is not entitled to go into the question of title, when there are encumbrances in respect of the property relating to which the power of attorney is presented, the first respondent is bound to refuse registration of such documents. The power of attorney, if registered, is bound to create confusion as against the existing encumbrance entries in relation to the property in question. In such circumstance, according to the learned Special Government Pleader, the first respondent is wholly justified in refusing registration of the general power of attorney deed and it does not call for any interference by this Court.

11. The learned counsel appearing for the respondents 2 to 9, who were subsequently impleaded in this writ petition, would contend that the respondents 2 to 9 are joint owners of the land in Survey No.5/B1 measuring 3.63 acres. According to the learned counsel, the respondents 2 to 9 have purchased the entire extent of land measuring 3.63 acres by means of separate registered sale deeds on various dates. In other words, the petitioner has no exclusive right or title over the land comprised in Survey No.5/B1. According to the learned counsel for the respondents 2 to 9, the petitioner with an intention to grab the entire extent of land to which the respondents 2 to 9 also have an interest, has presented the general power of attorney deed in favour of one Mr. A. Arumugam for registration. When the joint patta in respect of the above property stands in the name of 12 persons, the petitioner cannot claim any exclusive right over the land in question. The first respondent is therefore right in refusing to register the general power of attorney. If the power of attorney is registered and acted upon, it will bound to create encumbrances over the land and in which event the respondents 2 to 9 will be highly prejudiced. According to the learned counsel, the first respondent has rightly refused registration of the power of attorney deed as it will result in adverse consequences to the other owners who also have a right over the said land. In fact, as against the grant of patta in favour of the writ petitioner, an application has been filed before the District Revenue Officer, Coimbatore on 12.05.2015 to remove the name of the petitioner from the joint patta. Based on such application, an enquiry was conducted on 30.12.2015 and thereafter, the enquiry was adjourned. When the patta granted in favour of the petitioner itself was without any basis, the petitioner has no right at all to execute the general power of

attorney deed. In any event, if the general power of attorney deed is registered and the agent acts upon the same, it will result in multiplicity of proceedings and therefore, the first respondent is right in refusing to register the general power of attorney presented by the petitioner.

12. The learned counsel appearing for the respondents 2 to 9 would rely on Section 34 and 35 of the Tamil Nadu Registration Act and made a detailed submission. Section 34 of the Act provides for conducting enquiry before registration by the registering officer in the presence of all the parties who claims title to the property. Further, Section 35 of the Act provides that if all the parties to the document appear before the registering officer and if any one object to the execution of the document, the first respondent is duty bound to conduct appropriate enquiry. In this case, the first respondent, on perusal of the patta which stands in the name of 12 persons, including the petitioner, has rightly refused to register the general power of attorney especially when the other pattadhars were not present before the first respondent or there is any evidence to show that they were aware of the presentation of the general power of attorney deed by the petitioner. The learned counsel therefore prayed for dismissal of the writ petition.

13. I heard the learned counsel on either side and perused the materials placed on record. On consideration of the submission of the counsel on either side, the question that emerges for consideration of this Court is whether the first respondent is empowered to refuse to register the power of attorney presented by the petitioner for registration.

14. Before dealing with the various rival submissions made by the counsel on either side, it is just and necessary to look into the provisions of the Act and Rule. Part III of the Act deals with documents which can be registered. Part VI of the Act deals with documents that may be presented for registration. Part XII of the Act deals with the power of the registering authority to refuse registration of an instrument. In Part III, Section 21 (1) there is a prohibition prohibiting the registering authority from registering non-testamentary document relating to immovable property without proper description or identity of the property sought to be registered. Section 21 reads as follows:-

(1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

15. Rule 18 of the Tamil Nadu Registration Rules require the registering authority to examine the documents presented for registration and it can usefully be extracted hereunder:-

"18. Whenever any non-testamentary document presented for registration relates to

land situate in any local area in respect of which the Government have issued a rule under Section 22 (1) of the Act requiring description by reference to a Government map or survey, the registering officer shall satisfy himself that if the land comprises one or more entire survey fields or subdivisions, the document specifies the number of each field or subdivision and that if the land has no separate number assigned to it the document specifies the number assigned to the field or subdivision in which the land is situated and further includes a description of the land sufficient for its identification.

16. It is the specific contention of the petitioner that what was sought to be registered is only a power of attorney deed and if it is registered, it will not result in transfer of the property or extinguish the existing right of any person. It is seen from the records that the patta in respect of the land covered under the power of attorney deed sought to be registered by the petitioner stands in the name of 12 persons, including the petitioner. The name of the petitioner is prominently mentioned in Serial No. 4 of the patta. The first respondent, in the impugned letter has stated that the patta in respect of the land stands in the name of 12 persons besides that there are several encumbrances exists in the land and therefore it is desirable for the petitioner to approach the competent civil Court to get a declaratory decree.

17. A reading of the impugned letter would indicate that the first respondent is not sure about the identity of the property covered under the power of attorney deed and that is also one of the reasons for refusing to register the power of attorney deed. In other words, the first respondent has not satisfied himself about the identity of the land covered under the power of attorney deed. If it is so, in my considered opinion, instead of refusing to register the document, the first respondent ought to have conducted necessary enquiry

18. As per Rule 18 of the Rules, it is the bounden duty of the first respondent to satisfy himself, before registering a document, as to whether the property is free from any encumbrances or there is any fraudulent transaction sought to be made. In such view of the matter, the first respondent ought to have conducted necessary enquiry especially when the patta in respect of the land covered in the power of attorney deed stands in the name of 12 persons. In the absence of conducting any enquiry, the first respondent is not justified in passing the impugned order.

19. It is also seen from the impugned letter of the first respondent that without even conducting any enquiry with the other co-owners, in whose names the patta stands along with the petitioner, the first respondent refused registration of the power of attorney on the ground that there are encumbrances

existing in the property covered in the power of attorney sought to be registered by the petitioner. This would only indicate that the first respondent has gone into the title of the petitioner to execute the power of attorney, which is legally impermissible. In this context, it is desirable to refer to the order passed by this Court in the case of (M. Gopinathan and others vs. The Sub-Registrar, Gudalur, The Nilgiris District and another) reported in 2004 (3) Law Weekly 185 wherein in identical circumstance, this Court held that the registering authority need not concern about the consequences of a particular transaction and it is hit by Rule 55 of the Rules. The Registering Authority has to only satisfy the correctness of the execution of the document and not about the right of the person to deal with the property. In such view of the matter, in the light of the order passed by this Court mentioned above, the impugned letter of the first respondent has to be set aside.

20. In an identical circumstance, this Court laid down the parameters required for conducting an enquiry by the Registering Authority in the case of (Asset Reconstruction Company (India) Limited rep. by its Manager vs. Inspector General of Registration, Chennai and others) reported in (2016) 1 MLJ 713. In Para No.30 of the decision, the findings rendered by this Court can usefully be referred to as follows:-

"30. 30. Thus, when the presentation on the face of it is unauthorised, it can never be any registration giving an iota of recognition through the official act. Rule 22 of the Registration Rules under Chapter VII deals with presentation and examination of documents. When we speak about examination of document, the registering officer will have to examine its contents as stated therein. Similarly, Rule 55 speaks about enquiry before registration. Such an enquiry is not to be made only on title, but must necessarily include the verification of the facts as stated in the document sought to be registered. Though Rule 55 derives power under Section 35 of the Registration Act, it throws light on the scope and power of the Registering Officer. Therefore, what is required is only examination of the contents of the document, which would also include the source for executing the document. The source, being a power deed, such an examination would not be construed as one of title. It is only to check as to whether the document, which forms the basis of execution of the sale deed, empowers the executant to do so or not. After all, there is no dispute since the title and execution are not denied as the executant seeks registration based upon that document alone. When there is no valid execution, the deed becomes void as there is no executant. Thus, registration of such a deed also would become void."

21. In this case, the title of the petitioner to execute the power of attorney deed is opposed by the respondents 2 to 9 before this Court. Of course, they were not heard by the first respondent before refusing to register the power of attorney deed. Whenever an execution of the document is denied or opposed by any person, the Registering Authority has to take recourse to the provisions contained in Section 35 of the Act, more particularly sub-section (3) of Section 35 of the Act which provides that if any person by which the document purports to be executed denies its execution, the Registering Officer has to follow the procedure contemplated under Part XII. Part XII of the Act deals with the power of the registering authority to refuse to register the documents on the grounds set out therein by recording reasons for refusal. In the present case, the first respondent ought to have followed the provisions contained in Part XII by conducting appropriate enquiry as contemplated under Section 35 (3) before refusing to register the power of attorney presented by the petitioner. In my considered opinion, in the absence of any such enquiry, the impugned letter of the first respondent has to be set aside, but it is the submission of the counsel for petitioner that there is no need for conducting any enquiry by the first respondent since the document sought to be registered is only a power of attorney deed and even if it is registered, it will not result in transfer of the property or extinguish the existing right of any person. Further, according to the counsel for the petitioner, when various heads enumerated in Rule 162 of the Rules is not available in this case for the registering authority to refuse to register the document or when various grounds mentioned in Rule 55 is not available warranting the registering authority to conduct enquiry before registration, the question of directing the first respondent to conduct enquiry does not arise in this case. Hence, straightaway a direction can be given to the first respondent to register the power of attorney. But this Court is not inclined to accept the submission made by the counsel for the petitioner for the reason that Section 21 falls under Part III under the heading "of Registrable documents" which clearly says that no non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same. Therefore, in this case, when there is a doubt with regard to description or identity of the property, the registering authority can conduct an enquiry as contemplated under Section 35 (3) of the Act before refusing to register the document. The factual aspect of this case would show that the patta for the property for which power of attorney has been executed by the petitioner contains the name of the petitioner as well as 11 others. When that being so, if this Court, by closing it's eyes, straightaway cannot issue a direction to the first respondent to register the document in question. Further, under Section 71 of the Act, the Sub-Registrar shall make an order of refusal and record his reasons for such order and endorse the words "registration refused" on the document. As

against the said order, an appeal remedy is also available under Section 72 of the Act. Therefore, this Court is not inclined to give a positive direction to the Sub-Registrar to register the power of attorney presented by the petitioner.

22. In the result, by setting aside the impugned letter dated 10.04.2015 of the first respondent, the matter is remanded back to the first respondent to conduct appropriate enquiry to identify the land covered in the power of attorney deed presented by the petitioner after hearing the petitioner and the respondents 2 to 9. After completing such enquiry, the first respondent shall pass appropriate orders on merits and in accordance with law within a period of six weeks thereafter. Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rsh

To

The Sub-Registrar
Ganapathy Sub-Registrar Office
Ganapathy, Coimbatore

1 cc to Mr.K.Rajasekaran, Advocate, sr.29729

1 cc to Mr.G.Sankaran, Advocate, sr.29318

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