

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.18742 of 2016

1 P. Tamilselvi
2 S. Chandrasekaran

Petitioners

vs.

1 The Inspector General of Registration
No.100, Santhome High Road
Chennai 600 028

2 The District Registrar
The District Registration Office
No.7, Nellukara Street
Periya Kancheepuram
Kancheepuram 631 501

3 The Sub-Registrar
Walajabad Sub-Registration Office
Sriperumbudur Road
Walajabad
Kancheepuram 631 605

4 Sivakumar

Respondents

(R4 impleaded vide order dated
16.12.2016 in W.M.P. No.18393 of 2016)

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records relating to Na.Ka. P44/2016 dated 04.03.2016 issued by the third respondent and quash the same and consequently, directing to the respondents to register Document No.P44/2016 and Document No.P45 of 2016.

For petitioners
For respondents

Mr. Milton Arul Rajendran
Mr. V. Jayaprakash Narayanan
Special Government Pleader

For Respondent No.4 Mr. A. Selvendran

ORDER

This writ petition has been filed calling in question the legality and validity of the show cause notice dated 04.03.2016 issued by the third respondent and for a direction to the respondents to register Document No.P44/2016 and Document No.P45 of 2016.

2 The factual matrix of the case is as under:

2.1 The land measuring 4.46 acres in S. Nos.847/2, 847/1B, 854/2 and 855/2, Vadakkuppattu Village, Sriperumpudur Taluk, originally belonged to one Saraswathi Ammal. The said Saraswathi Ammal breathed her last on 27.06.2005 leaving behind Vasantha (daughter) and Sivakumar (son) as her legal heirs. One Viswanathan claiming himself to be the legal heir of Saraswathi Ammal, along with his three sons, viz., Palani, Kumar and Muthu, executed a power of attorney for the said property belonging to Saraswathi Ammal in favour of one Guhan on 25.07.2008 vide document no.2172 of 2008 registered in the Sub Registrar's office, Anna Nagar. The said Guhan, who is the power of attorney holder of Viswanathan and his sons, sold 3.46 acres of the same property to one Tamil Selvi, the first petitioner herein, through one V.Sivakumar, who is said to be a confirming party, by three deeds of sale bearing document nos.6495, 6496 and 6497 of 2008 dated 18.08.2008 in the Sub Registrar's Office, Wallajahbad.

2.2 It appears that apart from this property, Tamil Selvi has other properties as well in and around the area in question. Therefore, Tamil Selvi sold all the properties, including the land of 4.46 acres to Almco Properties Private Ltd., represented by Chandrasekaran, the second petitioner herein, by two document nos.917 and 918 of 2009 on 27.02.2009 in the office of the Sub Registrar, Wallajahbad. Sivakumar, S/o Saraswathi Ammal, on coming to know of this, filed a complaint, based on which, the Inspector of Police, District Crime Branch, Kancheepuram, registered a case in Cr. No.27 of 2015 on 26.10.2015 against several persons including Chandrasekaran.

2.3 While so, Tamil Selvi and Chandrasekaran, the petitioners herein, filed Crl.O.P. No.30654 of 2015 before this Court seeking anticipatory bail. In the said case, by order dated 15.02.2016, Tamil Selvi, Chandrasekaran and Sivakumar (de facto complainant) were referred to the Mediation and Conciliation Centre for arriving at an amicable settlement. Tamil Selvi and Chandrasekaran agreed to cancel the sale deeds in respect of 4.46 acres of land which belonged to Saraswathi Ammal and accordingly, they entered into a mediation agreement before the Mediation and Conciliation Centre. They have also

put Sivakumar into possession of the property. But, they were not able to cancel the sale deeds, because, the sale deeds in Document Nos.917 and 918 of 2009 encompass not only the land in question measuring 4.46 acres belonging to Saraswathi Ammal group but also other properties.

2.4 Chandrasekaran and Tamil Selvi prepared two deeds of cancellation, both dated 01.03.2016, for cancelling the earlier sale deeds in respect of 4.46 acres of land and they presented the cancellation deeds before the Sub Registrar's office at Wallajahbad on 01.03.2016. The Sub Registrar, Wallajahbad, by communication dated 04.03.2016, had called upon Tamil Selvi to show cause as to why an order refusing registration of documents should not be passed. Challenging the said show cause notice, Tamil Selvi and Chandrasekaran are before this Court.

3 Heard Mr. Milton Arul Rajendran, learned counsel for Tamil Selvi and Chandrasekaran, Mr. A. Selvendran, learned counsel for Sivakumar and Mr.V.Jayaprakash Narayanan, learned Special Government Pleader for the official respondents. At the request of this Court, Mrs. D. Rathna, Additional Inspector General of Registrar (Stamps & Registration) is present.

4 This writ petition is liable to be dismissed on the short ground that the petitioners have challenged only the show cause notice, inasmuch as it is always open to them to appear before the Sub Registrar's Office and give their explanation. But, this Court does not want to take such an extreme step, because, the parties have already suffered enough and if such a method is resorted to, it will only further aggravate the travails of Sivakumar.

5 The Sub Registrar, Wallajahbad, has filed counter affidavit before this Court contending that there cannot be partial cancellation of a registered document and the document can be cancelled only as a whole.

6 The learned Special Government Pleader submitted that Entry 17 of Schedule I of the Indian Stamp Act, 1899 (for brevity "the Act") does not provide for partial modification.

7 It may be necessary to extract Entry 17 of Schedule I of the Act, which is as under:

17. Cancellation - Instrument of (including any instrument by which any instrument previously executed is cancelled) if attested and not otherwise provided for.	Fifty rupees
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8 There is much force in the submission of the learned Special Government Pleader. However, on the suggestion by Mrs. D. Rathna, Additional Inspector General of Registrar (Stamps & Registration), the learned Special Government Pleader submitted that it is open to the parties to present a deed of release under Entry 55 of Schedule I of the Act. Entry 55 of Schedule I of the Act reads as under:

A. Release, that is to say any instrument (not being such a release as is provided for by Section 23- A) or a release referred to in clauses B, C and D of this Article whereby a person renounces a claim upon another person or against any specified property	One rupee for every Rs.100 or part thereof of the market value of the property which is under release.
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9 From a reading of the above Entry, it is seen that Tamil Selvi and Chandrasekaran can either release 4.46 acres of land covered by document nos.917 and 918 of 2009 in favour of legal heirs of Saraswathi Ammal or inter alia they can also release their claim against any specific property, which means that they can simply have release deed registered stating that they are releasing all their rights qua 4.46 acres of land.

10 In the considered opinion of this Court, this will provide an equitable solution for both the parties. This Court places on record its appreciation to Mrs. D. Rathna, Additional Inspector General of Registrar (Stamps & Registration) for appearing before this Court and assisting in the administration of justice.

11 This Court directs the parties to present an appropriate document covered under Entry 55-A of the Act for releasing their claim in respect of 4.46 acres of land covered by Document Nos.917 and 918 of 2009 before the Sub Registrar's Office, Wallajahbad and on such document being presented, the same shall be registered in accordance with law, after due verification and other formalities.

With the above direction, this writ petition stands disposed of. Costs made easy.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Inspector General of Registration
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Chennai 600 028
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Kancheepuram - 631 605

+2cc to Mr.J. Meltan Arul Rajendran, Advocate, S.R.No.73811
+1cc to Mr.M. Durai Murugan, Advocate, S.R.No.74046

SSK(CO)
md(20/01/2017)

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