

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.29855 of 2015

R.Prakash

... Petitioner

Vs.

- 1.The Inspector General of Registration,
No.100, Santhome High Road,
Pattinapakkam
Chennai 600 028.
- 2.The District Registrar (Administration)
District Registrar Office,
South Chennai, Chennai 600 015.
- 3.The Joint II Sub Registrar,
Sub Registrar office,
Saidapet, Chennai 600 015.

.... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the respondents herein to number the pending Document No.45/2014 on the file of the third respondent and release the same.

For Petitioner : Mr.R.Rajesh Vivekananthan

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

ORDER

The petitioner has come up with the present writ petition for a mandamus, directing the respondents to number the pending Document No.45/2014 on the file of the third respondent and release the same.

2. The case of the petitioner, as averred in the writ petition is as follows:

2.1 The petitioner intended to purchase the property consisting of house and ground bearing Door No.27 (Old Door No.22) Alandur Road, Saidapet Village, Chennai 600 015, in

T.S.No.37, Survey No.44/A2B, Block No.23, measuring to an extent of 205sq.ft and building consisting of ground and first floor measuring to an extent of 273 sq.ft. together with 1/6th (68 sq.ft) common passage from one Veeraraghavan. When the sale deed pertaining to the said property was presented for registration on 02.04.2014, the third respondent refused to receive and register the same on the ground that an objection was raised by one Chandrasekaran stating that a civil suit in O.S.No.447/2013 is pending before the XI Assistant Judge, City Civil Court, Chennai in respect of the property in question. However, the said suit was dismissed.

2.2 On 07.05.2014, the petitioner approached the third respondent and requested to register the above mentioned sale deed by relying on the judgment reported in 2010 (7) MLJ 590, wherein, it has been held that a Sub Register must register the document, if the execution is admitted by the person and the identity of the person is established and he cannot refuse to register the document. However, the third respondent refused to register the document. Hence, the petitioner issued a legal notice dated 14.05.2014 to the respondents.

2.3 Thereafter, on 18.07.2014, the petitioner approached the third respondent and submitted the relevant documents to the effect that the suit, which was mentioned in the objection petition, was nothing to do with the title of the property. On receipt of the same, the third respondent received the sale deed, but he is keeping the same as pending vide Document No.45/2014.

2.4 Since the third respondent failed to register the document, the petitioner issued another notice dated 02.09.2014 to the respondents enclosing a copy of the judgment and decree made in O.S.No.447/2013. Even thereafter, there was no response with regard to the petitioner's request.

2.5 In the mean time, the petitioner's brother who is an Advocate, personally approached the third respondent and explained the case of the petitioner in detail and requested to register the sale deed in respect of the property in question.

2.6 While so, the said Chandrasekaran filed another suit in O.S.No.1471/2014 before the XIII Assistant Judge, City Civil Court, Chennai against the petitioner's vendor by suppressing the dismissal of the earlier suit filed by him. On coming to know about the filing of the suit, the vendor of the petitioner filed a petition to reject the plaint. The said petition was allowed and the suit was also rejected by order dated 08.01.2015. Therefore, as on today, there is no civil suit pending in respect of the property in question.

2.7 Stating all the above facts, the petitioner issued a legal notice dated 23.01.2015 to the respondents, requesting to register the pending document and release the same. The petitioner's vendor also issued a legal notice dated 19.02.2015 to the respondents to register and release the document. However, till date, no order has been passed by the respondents, either to register or reject the document. Therefore, the petitioner has no other alternative except to approach this Court with the present writ petition for the above stated relief.

3. A counter affidavit has been filed by the respondents interalia stating as follows:

(i) O.S.No.447/2013 filed by Chandrasekaran was dismissed on 28.02.2014 by the learned XI Assistant Judge, City Civil Court, Chennai. However, when the order of stay granted on 27.08.2014 in O.S.No.6253 of 2010 was in force, the petitioner pressurised the third respondent to register the sale deed and release the document.

(ii) In the affidavit filed in support of the writ petition, the petitioner himself admitted that the property is a pathway. He further stated therein that it is not the Government or public pathway and is only by way of an arrangement made between the parties to the effect that no one should construct a pucca superstructure in the pathway and convey the same to any one. However, under the pending document, the petitioner's vendor has conveyed the land and superstructure, which was built in the pathway and the petitioner has also purchased the same. Therefore, the third respondent refused to register the same, based on the first respondent's Circular No.67 dated 03.11.2011, wherein, it has been instructed that a Registering Officer should verify the title of a property before registering the document.

(iii) O.S.No.1471/2014 filed by Chandrasekaran was rejected only on 08.01.2015 by the XVIII Assistant Judge, City Civil Court, Chennai.

(iv) Since the Civil Suit pertaining to the property in question is pending, the respondents are not in a position to register and release the document. By stating so, the respondents prayed to dismiss the writ petition.

4. Heard the rival submissions made on either side and perused the documents placed before this court.

5. From the facts made available herein, it is seen that the third respondent had refused to register the sale deed executed in favour of the petitioner, based on the objection made by one Chandrasekaran to the effect that the civil suits

are pending in respect of the subject matter of the property, however, he is keeping the document as pending vide Document No.45/2014. Subsequently, both the Civil Suits filed by the objector Chandrasekaran were dismissed and as on date, there is no civil suit pending in respect of the property in question. In that event, this Court is of the opinion that the third respondent cannot keep the document as pending and he ought to have either registered the document or returned the same without registration.

6. In such view of the matter, this Court permits the petitioner to submit a fresh representation enclosing all the necessary documents in support of his claim along with a copy of this order to the third respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the third respondent is directed to conduct enquiry by affording an opportunity of personal hearing to the petitioner as well as to all the necessary parties, if any and pass appropriate orders, with regard to Pending Document No.45/2014, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

7. The writ petition is disposed of accordingly. No costs.

rk

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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

2.The District Registrar (Administration)
District Registrar Office,
South Chennai, Chennai 600 015.

3.The Joint II Sub Registrar,
Sub Registrar office, Saidapet,
Chennai 600 015.

+ 1 CC TO THE GOVT.PLEADER, SR 19778

+ 1 CC TO M/s.R.RAJESH VIVEKANANTHAN, ADVOCATE SR 19724

KR/8/6/16

W.P.No.29855 of 2015