

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Writ Petition No. 43318 of 2016

1. Amsa
2. V.Ammu
3. R.Srinivasan

.. Petitioners

Versus

1. The Inspector General of Registration,
Santhome Road, Chennai 600 028.
2. The District Registrar,
Thiruvallur Post and District.
3. The Sub-Registrar Office,
Poonamallee.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the third respondent, Sub-Registrar, Poonamallee to register the Rectification Deed dated 04.11.2016 executed by the petitioners after considering the relevant records within a reasonable period which may be stipulated by this Court.

For Petitioners : Mr. V. Raghupathi

For Respondents : Mr. P.V. Selvakumar
Additional Government Pleader

ORDER

The petitioners have come up with this writ petition seeking a direction to the third respondent, Sub-Registrar, Poonamallee to register the Rectification Deed, dated 04.11.2016 executed by them after considering the relevant records within a time to be stipulated by this Court.

2. It is the case of the first petitioner that her husband Mr. Shanmugam Chettiar acquired about 46 cents out of 92 cents of land in S.No.29/1A in Poonamallee Village and Taluk out of a registered partition deed dated 16.05.1972 and from the date of the said partition, he was in possession and enjoyment of the said extent of land. During his lifetime, he sold 28 cents out of the said 46 cents of land to third parties and he was in possession and enjoyment of the remaining 18 cents of land free from any encumbrance. On 29.10.2015 Shanmugam Chettiar died leaving behind the 1st petitioner as his only legal heir. During his life time,

Shanmugam Chettiar has executed a registered Will dated 18.10.2013 registered as document No.66 of 2013 on the file of Sub-Registrar, Poonamallee, in which the first petitioner has signed as second witness. As per the said Will, the second and third petitioners were the beneficiaries of the in whose favour the land has been bequeathed by the deceased Shanmugam Chettiar.

3. The case of the petitioners is that the correct Survey Number for 92 cents of Nanja land is only 29/1A but due to bonafide oversight and by reason of a typing mistake, the said Survey Number was wrongly typed as 29/1H. Therefore, to rectify the mistake crept in the Will dated 18.10.2013, the first petitioner presented a Rectification Deed dated 07.11.2016 before the third respondent. However, the third respondent refused to register the rectification deed on the ground that such mistake could be rectified only by the Testator who executed the Will. As against the refusal on the part of the third respondent to register the Rectification Deed presented by the petitioners, the petitioners have come up with this writ petition.

4. The learned counsel for the petitioners would submit that the mistake had crept in indicating the survey number in the Will executed by the Testator. When the testator died and the Will came into effect, the petitioners have no other alternative but to present a rectification deed to rectify the mistake in indicating the Survey Number. According to the counsel for the petitioners, without rectifying the mistake crept in the Will, the petitioners 2 and 3, who are the beneficiaries of the Will, cannot assert a right over the property bequeathed in their favour. The third respondent, without considering the fact that the testator died on ***29.10.2015**, refused to entertain the Rectification Deed dated 04.11.2016 for registration.

5. On the above contention, this Court heard the learned Additional Government Pleader who would only contend that the third respondent is justified in not entertaining the rectification deed, which was executed by the Testator.

6. I heard the learned counsel on either side and perused the material documents available on record. As rightly pointed out by the third respondent, when an error had crept in the Will executed by the testator in relation to indicating the survey number, it is the testator who has to make corrections in the Will by executing necessary rectification deed. However, in this case, the testator died on ***29.10.2015** and it could be evident from the legal heir certificate produced by the petitioners in the typed set of paper. As per the Will, the petitioners 2 and 3 are the beneficiaries and on the death of the testator on ***29.10.2015**, the Will came into force. As it is stated that there is an error crept in the Will in indicating the correct survey number, the petitioners are left with no other alternative but to present a rectification deed. In such circumstances, this Court is of the view that the third respondent can consider the claim of the petitioners to register the rectification deed and for this purpose, the petitioners shall produce necessary documents to prove that the land in Survey No.29/1A was owned by the deceased Shanmugam Chettiar and it

corresponds to the Survey Number which is mentioned in the rectification deed. On production of documentary evidence by the petitioners, the third respondent shall examine the same, afford opportunity of hearing to the petitioners and others concerned and consider as to whether the rectification deed can be taken up for registration and thereafter pass appropriate orders on merits and in accordance with law. Such an exercise shall be completed by the third respondent within a period of eight weeks from the date of receipt of a copy of this order.

7. With the above direction, this Writ Petition is disposed of. No costs.

-s/d-

Assistant Registrar
Dt.02.3.2017

***Amended as per order of the Court
order dt.23.3.2017 in WP.43318/16**

sd/-

**Assistant Registrar (Co-VI)
dt.11.4.2017**

True Copy

Sub-Assistant Registrar

aeb/rsh

To:

1. The Inspector General of Registration, Santhome Road, Chennai 600 028. ***To be substituted to the order already despatched on 09.3.17.**
2. The District Registrar, Thiruvallur Post and District.
3. The Sub-Registrar Office, Poonamallee.

+1 CC to Government Pleader, High Court, Chennai Sr.No.73659.

+1 CC to Mr. V. Raghupathi, Advocate Sr.No.73659.

+1 cc to Mr.V.Raghupathi, advocate,sr.18214 (11/4)

W.P.No.43318 of 2016

VSN(CO)
KP(06.03.2017)
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