

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WRIT PETITION No.43405 of 2016

Sairabanu Mohamed Rafi

... Petitioner

vs.

The Sub-Registrar,
Mayiladuthurai,
30, Avaiyambalpuram,
Town Extension,
Mayiladuthurai - 609 001.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondent to register the Deed of Sale dated 29.09.2016, executed by the petitioner on behalf of the petitioner's husband, Mohamed Rafi, to R.Sankar, son of B.Ramdas, of properties located at T.S.Nos.1099 and 1100, Nagapattinam District, Mayiladuthurai Town.

For Petitioner : Mr.Arun Karthik Mohan
For Respondent : Mr.S.Rajeswaran
Special Government Pleader

ORDER

The petitioner has come up with this Writ Petition seeking a direction to the respondent to register the Deed of Sale dated 29.09.2016, executed by her on behalf of her husband, Mohamed Rafi, to R.Sankar, son of B.Ramdas, in respect of the properties located at T.S.Nos.1099 and 1100, Nagapattinam District, Mayiladuthurai Town.

2. According to the petitioner, her husband is in a state of coma and is physically and mentally incapacitated, completely bound to his bed and is incapable of making any decisions. Stating her husband's incapacity, the petitioner filed W.P.No.28435 of 2015 seeking a direction from this Court to appoint her as a guardian of her husband, Mr.Mohamed Rafi and

also to appoint her as the Manager of his properties, both immovable and movable and further permit her to sell on his behalf his immovable property bearing Block No.31(1), Ward No.3, T.S.No.1101, to an extent of 263 sq. ft. at Mayiladuthurai Town and immovable property bearing T.S.No.1102 to an extent of 144 sq. ft. and additional area to an extent of 407 sq. ft. bearing Door No.74 at Mayiladuthurai Town.

3. By an order dated 06.01.2016, this Court, accepting the report of the 3rd respondent, disposed of the said Writ Petition appointing the petitioner as guardian of her husband, Mr.Mohammed Rafi, for the purpose of dealing with his immovable properties and also for the purpose of operating his bank accounts.

4. Accordingly, to meet the enormous expenses incurred for taking care of her husband, who is still in a state of coma, the petitioner was constrained to bring to sale the properties belonging to her husband at S.Nos.1099 and 1100, Nagapattinam District, Mayiladuthurai Town, after having entered into a deed of sale dated 29.09.2016 with one R.Sankar, son of B.Ramdas. However, the 1st respondent refused to register the sale deed and issued a check-slip dated 20.10.2016 to the petitioner stating its purported reasons for its refusal to register.

5. It is the further case of the petitioner that her husband Mr.Rafi was the sole breadwinner of their family. Since her husband continues to be in a vegetative state and does not have any mental capacity to understand what is happening around him, or indeed speak through words or respond through hand or eye movements, the petitioner is in dire need of selling the immovable properties at T.S.No.1099 and T.S.No.1100 at Nagapattinam District, Mayiladuthurai Town to meet the medical expenses of her husband. Hence, she seeks a direction to the respondent to register the Sale Deed dated 29.09.2016 executed by her on behalf of her husband.

6. Learned counsel for the petitioner submitted that the property in question needs to be sold for the purpose of maintaining the petitioner's husband.

7. Learned Special Government Pleader submitted that the authorities concerned have already gone by the order dated 06.01.2016 passed by this Court, as such.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. It is seen that the earlier order of this Court dated

06.01.2016 passed in W.P.No.28435 of 2015, does not restrict itself to the Survey Number mentioned in the case on hand, but, the petitioner was appointed as a guardian of her husband in respect of all his immovable properties. For better appreciation of the case, operative portion of the order dated 06.01.2016 is extracted hereunder:

"Accordingly, while accepting the report of the 3rd respondent, it is hereby ordered that the petitioner is appointed as guardian of her husband, Mr.Mohammed Rafi, residing at No.12, Nachimuthu Nagar, Koranad, Mayiladuthurai, for the purpose of dealing with his immovable properties and also for the purpose of operating his bank accounts.

10. The above order does not restrict itself to the Survey Numbers mentioned therein. It includes all the properties of the petitioner's husband. It also indicates that the petitioner was appointed not only as a guardian for the property, but also as a guardian of her ailing husband. Therefore, the objection raised by the authority before whom the sale deed was presented for registration, has to be struck down. While so, taking note of the fact that the petitioner's husband is still in the stage of coma and that the petitioner has pleaded persistently the dire need to sell the properties in question to meet his treatment expenses, this Court directs the respondent to register the sale deed presented by the petitioner, if it is otherwise in order.

11. It is further held that the petitioner shall file a Report before this Court regarding the sale proceeds received from the sale of the property in question, within three months from the date of sale and the petitioner shall deposit 50% of the sale proceeds in the name of her husband in a Fixed Deposit Scheme, renewable once in two years. It is made clear that the cumulative interest on such Fixed Deposit should be utilised only for the maintenance of the petitioner's husband.

This Writ Petition is disposed of with the above direction. No costs. Consequently, connected W.M.P.No.37263 of 2016 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

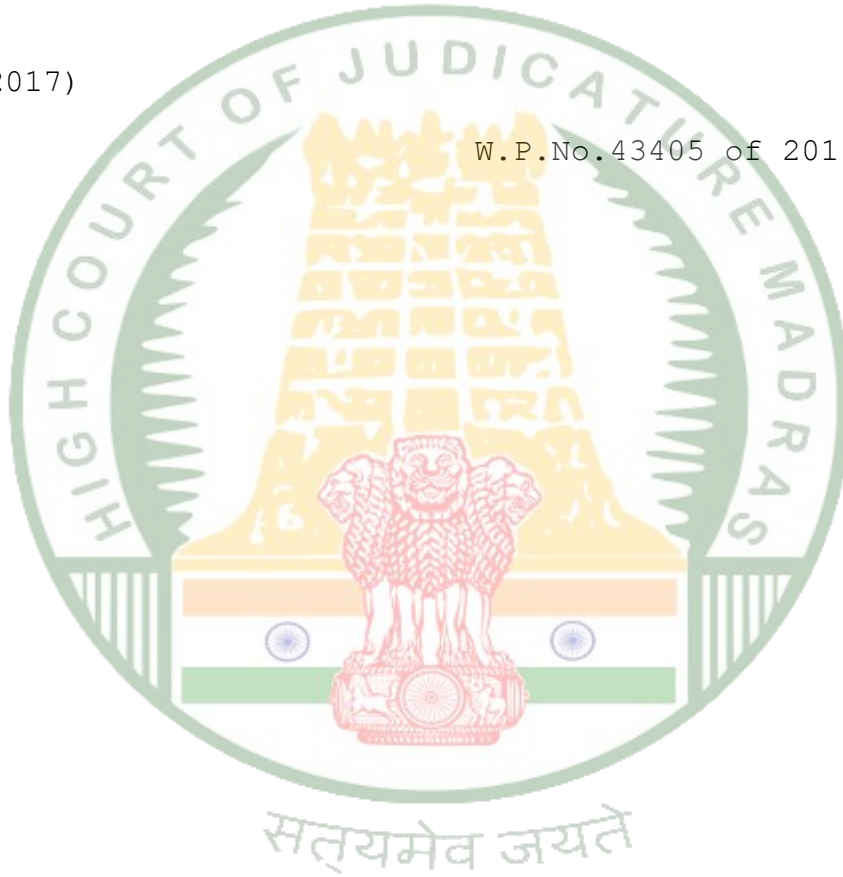
aeb
To:

The Sub-Registrar,
Mayiladuthurai,
30, Avaiyambalpuram,
Town Extension,
Mayiladuthurai - 609 001.

+lcc to Mr.Arun Karthik Mohan, Advocate, S.R.No.73772
+lcc to the Government Pleader, S.R.No.73800

cp (CO)
md(31/01/2017)

W.P.No.43405 of 2016



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