

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.5844 of 2016

M.Meena

... Petitioner

Vs.

1.The District Registrar,
Registration Department,
Tindivanam.

2.The Joint Sub-Registrar No.2,
Tindivanam.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent of his proceedings in the Book II Record of Reasons for Refusal to Register dated 29.01.2016 in P1/2016 in respect of the sale deed document dated 23.10.2015 presented on 11.01.2016 and to quash the same, thereby to direct the 1st respondent to register the document in accordance with the Indian Registration Act and to deliver the registered document to the petitioner in respect of (Old S.No.97/11) New S.No.118/4A1 - 21 ½ cents situate at Ongur Village, Tindivanam Taluk.

For Petitioner : Mr.N.Suresh

For respondents : Mr.P.Sanjay Gandhi,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to his proceedings in the Book II Record of Reasons for Refusal to Register dated 29.01.2016 in P1/2016 in respect of the sale deed dated 23.10.2015 presented on 11.01.2016 and to quash the same and consequently, to direct the 1st respondent to register the document in accordance with the Indian Registration Act and to deliver the registered document to the petitioner in respect of (Old S.No.97/11) New S.No.118/4A1 - 21 ½ cents situate at Ongur Village, Tindivanam Taluk.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1. The property in New S.No.118/4A1 (Old S.No.97/11) measuring to an extent of 21 ½ cents and the property in S.No.1184A measuring to an extent of 20 cents and other properties were the ancestral properties of the petitioner's grandfather Govindan and his brother Ramu Gounder. The said Ramu Gounder had three sons by name Jothi, Anbazhagan and Elumalai. Insofar as the share of Ramu Gounder is concerned, their sons had sold their 20 cents in the said Survey number to one T.Seenuvasan on 14.12.2006 vide Doc.No.1614/2006.

2-2. The remaining property viz., 21 ½ cents belongs to the petitioner's grandfather Govindan. The property was a joint family property of Govindan. The petitioner, being the granddaughter of the said Govindan, got a share in the joint family properties of Govindan. The petitioner filed a suit in O.S.No.503/2007 on the file of the Principal District Munsif Court, Tindivanam, for partition and separate possession, against her father Murthy, her paternal uncle Ezhil, aunt Visalakshi, Keliya and her grandmother Rajam. In the said suit, a preliminary decree for partition of 3/25th share was granted by the learned Principle District Munsif on 03.02.2009. In the said suit, seven items of properties were mentioned, of which the subject property of the present writ petition was mentioned as 2nd item property. Thereafter, the petitioner filed a petition for final decree, for metes and bounds partition in I.A.No.827/2010 in O.S.No.503/2007 before the learned Principal District Munsif Court, Tindivanam and in the said final decree proceedings, an Advocate Commissioner was appointed and after metes and bounds partition on the basis of the report submitted by the Advocate Commissioner, a final decree was passed on 13.12.2012, allotting Survey No.118/4A - 21 ½ cents as her share representing her 3/25th share. In the said final decrees proceedings, the petitioner's father and other had remained exparte.

2-3. Thereafter, on the basis of the final decree, the petitioner filed an execution petition in E.P.No.34/2013 in O.S.No.503/2007 for delivery of possession and it was ordered. Thereafter, the property was delivered to the petitioner on 27.01.2005 and the petitioner has been in possession and enjoyment of the same. Thereafter, the petitioner has also mutated the revenue records in her name and patta was also transferred in her name in respect of the property in S.No.118/4A1 as patta No.8151. While so, the petitioner executed a sale deed in favour of one G.Balakrishnan on 23.10.2015 for a valid consideration. The said Sale Deed was presented before the 2nd respondent along with all documents, including the Court Decrees and Encumbrance Certificate. But, the 2nd respondent refused to

accept the document for registration. Hence, the petitioner had filed a writ petition in W.P.No.37292/20015 before this Court and this Court, by order dated 24.11.2015 directed the 2nd respondent to receive the document submitted by the petitioner and to pass appropriate orders either accepting or refusing the sale deed.

2-4. Pursuant to the orders passed by this Court, the petitioner presented the document before the 2nd respondent on 11.01.2016. But, by the impugned order dated 29.01.2016, the 2nd respondent unfortunately without even calling for any records to be produced by the petitioner, straightaway ordered to refuse to register the document, stating that the petitioner has no right to sell the property. The impugned order passed by the 2nd respondent is totally vitiated for non-application of mind. On the basis of two entries in the Encumbrance Certificate viz., in respect of Doc.No.1543/2011 and in respect of Doc.No.1614/2006, the 2nd respondent has refused to register the subject document, stating that already the property was sold viz., entire 40 cents had already been sold and as such, the petitioner is not entitled to any property therein. According to the petitioner, the 2nd respondent ought to have seen that in respect of Doc.No.1614/2006, 20 cents in the survey number was in respect of the share of the said Ramu Gounder, whose sons have sold the same to one Seenuvasan. In respect of remaining 21 ½ cents (Item No.2 in the suit schedule properties), the petitioner had filed a suit in O.S.No.503/2007 for partition. In the said suit, preliminary decree was passed on 03.02.2009. During the pendency of the final decree proceedings, the petitioner's father Murthy along with others, surreptitiously had sold the property to one Ganesh Babu on 06.07.2011. Admittedly, the sale deed dated 06.07.2011 has been executed, only after preliminary decree was passed and after the final decree proceedings had started, in which Advocate Commissioner had also submitted his report. Therefore, the said sale which is said to have taken place on 06.07.2011 cannot be a valid sale. As on date, the petitioner is the owner of the subject property and patta also stands in her name. Hence, the petitioner has come forward with the present writ petition for the relief as stated supra.

3. Heard both sides and perused the materials available on record.

4. From a perusal of the materials available on record, it is seen that as on date, there is a final decree in favour of the petitioner, which was passed in O.S.No.503/2007 on 13.12.2012 by the learned Principal District Munsif, Tindivanam. Considering the facts and circumstances of the case, this Court is inclined to pass the following order_

The impugned order is quashed. The petitioner is directed to present the subject document to the 2nd respondent for registration, within a period of two weeks from the date

of receipt of a copy of this order. On such presentation, the 2nd respondent is directed to conduct an enquiry, by affording opportunity of personal hearing to the petitioner as well as to all the necessary parties, if any, and pass appropriate orders, with regard to the registration of the document, on merits and in accordance with law, within a period of eight weeks thereafter.

With the above terms, this writ petition is disposed of.
No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

[ssv]

To

1.The District Registrar,
Registration Department,
Tindivanam.

2.The Joint Sub-Registrar No.2,
Tindivanam.

+1cc to M/s. N. Suresh, Advocate, S.R.No.16393

+1cc to the Government Pleader, S.R.No.16315

SAIC(CO)
EU(30/03/2016)

सत्यमेव जयते

W.P.No.5844 of 2016

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