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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 28.07.2016

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P (MD) No.13317 of 2016

and

W.M.P (MD) No.9995 of 2016

1.M.Raj

2.R.Leela Raj

..Petitioners

Vs

1.The Inspector General of Registration,
Santhome High Road,
Chennai.

2.The District Registrar (Admn.),
St.Marks Street,
Palayamkottai,
Tirunelveli - 627 002.

4.The Sub-Registrar,
Office of the Sub-Registrar,
Pettai, Tirunelveli - 627 004.

..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order in No.A.The, Mu.No.4 of 2015, dated 15.09.2015 passed by the Third Respondent and impugned order in No.5002/B1/2015, dated 14.10.2015 passed by the Second Respondent and to quash the same and consequently to direct the Respondents to Register and release the sale deed kept as pending Document No.29 of 2015 executed by the Petitioners in respect of the property situated in S.No.15/1B, Vagaikulam Village, Tirunelveli Taluk and District.

For Petitioner :M/s.J.Ashok

For Respondents :Mr.S.Sadesh kumar
Addl.Govt.Pleader

ORDER

Heard both sides.

2.By consent of both sides, the main Writ Petition itself is taken up for final disposal.

<https://hcservices.ecourts.gov.in/hcservices/>

3.No counter is filed on behalf of the Respondents.



4. According to the petitioners, the refusal to register and release the Sale Deed kept as pending Document No.29 of 2015, executed by them in respect of the property bearing S.No. S.No.15/1B, Vagaikulam Village, Tirunelveli Taluk and District, is not correct one in the eye of Law. As a matter of fact, it is represented on behalf of the Petitioner that the Petitioners preferred an appeal on 23.09.2015 and that the Second Respondent / The District Registrar(Admn.), St.Marks Street, Palayamkottai, Tirunelveli on 14.10.2015, had inter-alia directed the petitioners to approach the Civil Court and to seek appropriate relief in regard to the registration of document in question. As a matter of fact, the Second Respondent had in the order, dated 14.10.2015 had referred to the Circular of the Inspector General of Registration bearing No.33/C1/2010, dated 15.9.2010.

5.The main grievance of the Petitioner is that the Respondents 1 to 3 are bound by the ingredients of the Indian Registration Act, 1908, relating to the registration of Sale Deed, if it is in order and not prohibited by a competent Court.

6.The Learned Counsel for the Petitioner urges before this Court that the Petitioners projected a Civil Suit in O.S.No.533 of 1993, on the file of the II Additional District Munsif court, Tirunelveli against one Thangammal, daughter of Issakkiammal, seeking declaration and permanent injunction. Ultimately, the suit, after contest, was decreed on 27.09.2001 by the Trial Court. Being dissatisfied with the said judgement and decree, dated 27.09.2001 passed in O.S.No.533 of 1993 by the Trial Court, the said defendant Thangammal preferred an Appeal Suit in A.S.No.75 of 2003, on the file of the First Appellate Court namely, I Additional Subordinate Judge, Tirunelveli and the said Court confined the decree only in respect of permanent injunction and rejected the prayer for declaration of title, holding that Thiruvavaduthurai Adheenam is a necessary party to the suit.

7.The First Petitioner and his wife/the Second Petitioner, as aggrieved persons of the aforesaid judgement of the First Appellate Court in A.S.No.75 of 2003 preferred a Second Appeal in S.A.No.740 of 2006 before this Court and this Court passed a judgement on 4.3.2011 by allowing the Second Appeal and restored the decree passed by the Trial Court by holding that the Thiruvavaduthurai Adheenam is not a necessary party and further, the documents on the Writ Petitioners side clearly establish their clear title over the said property.

8.The primordial stand of the Petitioners is that the competent Civil Court has given a clean chit in respect of title ~~over the said property~~ in the matter in question and when that be the facts situation, the Respondents/Authorities in Law have no right to refuse to register the Sale Deed, if it is in order. In this



connection, the Learned Counsel for the Petitioners projects a legal plea that the Respondents had failed to exercise their statutory powers enshrined under Section 52 of the Indian Registration Act, 1908 and Rule 55 and 162 of the Registration Rules.

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9. Yet another bone of contention of the Petitioners is that the Respondents have no valid or jurisdiction in Law to go into the validity of a document, brought for registration or the right of the executing party as per Rule 55 of the Registration Rules which runs as under:

Rule 55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document, but he is bound to consider objection raised on any of the grounds stated below:-

(a) that the parties appearing or about to appear before him are not the persons they profess to be.

(b) that the document is forged.

(c) that the person appearing as a representative assign or agent, has no right to appear in that capacity.

(d) that the executing party is not really dead, as alleged by the party applying for registration, or

(e) that the executing party is a minor or an idiot or a lunatic.

(g) The Respondents ought to have followed the duties of the Registering Officer, when a document is presented for registration as contemplated under Section 52 of the Registration Act..''

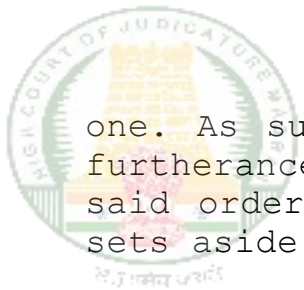
10. It is to be noted that the Third Respondent/The Sub-Registrar, office of the Sub-Registrar, Pettai, Tirunelveli - 627 004 in the order, dated 15.9.2015 (addressed to the Petitioner), had among other things, mentioned that the land bearing S.No.15/1B situated at Vagaikulam Village, Tirunelveli Taluk and District, by letter, dated 7.4.2015 received from the South Zone Manager of Thiruvavaduthurai Adheenam, stating that the land belong to them and when the document on 3.7.2015 in respect of the property in question was produced, based on the Inspector General of Registration Circular No.33, the document was kept as a pending one in P.No.29/2015 for the purpose of an enquiry and based on the enquiry, the document BK II-2/15 was refused. Furthermore, the reason for refusal to register the document was directed to be known by applying for the same and also as against the order, dated 15.9.2015, the Third Respondent had informed the Petitioner to prefer an appeal before the District Registrar, Tirunelveli within thirty days.



11. It transpires that the Petitioners preferred an appeal on 23.9.2015 before the Second Respondent/The District Registrar (Admn.) (i/c), St. Marks Street, Palayamkottai, Tirunelveli and the second Respondent on 14.10.2015 had passed an order inter-alia stating that based on the Circular No.33/C1/2010, dated 15.09.2010 of the Inspector General of Registration, the Third Respondent had conducted an enquiry and refused registration of document and in the circumstances, the relief can be obtained from the competent Civil Court.

12. It may not be out of place for this Court to make a pertinent mention that the Petitioner had preferred Appeal Petition before the Second Respondent/The District Registrar (Admn.) (i/c), St. Marks Street, Palayamkottai, Tirunelveli as against the order, dated 15.09.2015 passed by the Third Respondent and the said Appeal, on perusal, this Court finds that the same is an elaborate one. Further, the Second Respondent/The District Registrar (Admn.) (i/c), St. Marks Street, Palayamkottai, Tirunelveli while passing the impugned order, dated 14.10.2015 had not adverted to any of the averments/pleas taken by the Petitioners in the Appeal and simply passed a cryptic order, which, in the considered opinion of this Court, suffers from non-application of mind. Further, the said impugned order, dated 14.10.2015 of the Second Respondent/The District Registrar (Admn.) (i/c), St. Marks Street, Palayamkottai, Tirunelveli is a non-speaking order coupled with bereft of qualitative and quantitative reasons. In short, there is no outline of process of reasoning, except to state ultimately that the Petitioners have to approach the competent Civil Court for seeking relief in the subject-matter in issue. It cannot be gain-said that a non-speaking and a unreasoned order may be a just and valid one from the point of view of an authority who passes the said order. But so far as the Petitioners/aggrieved persons are concerned, the said order suffers from serious legal infirmities in the eye of Law.

13. It is to be borne in mind that when an Administrative Authority/Quasi-Judicial Authority is to pass necessary orders in the subject-matter in issue before him/it, then it has to follow the rules of the game in true letter and spirit. Also that, in a given proceeding, whether it is an Appeal/Revision or otherwise, filed by the aggrieved person(s), then it is incumbent on the part of the said Administrative Authority or Quasi-Judicial Authority to traverse upon the pleas/averments raised by the concerned authorities and after providing adequate opportunity to them and then to pass a final reasoned speaking order and that too, in a fair, free, with an open mind and in a dispassionate manner. Unfortunately, in the present case, this Court comes to a conclusion that the order, dated 14.10.2015 passed by the second Respondent is a non-speaking one, bereft of qualitative and quantitative reasons and in short, it is a cryptic



one. As such, this Court to prevent aberration of justice and in furtherance of substantial cause of justice, interferes with the said order, dated 14.10.2015 passed by the Second Respondent and sets aside the same. Consequently, the Writ petition succeeds.

14. In the result, the Writ Petition is allowed, leaving the parties to bear their own costs. Resultantly, the order, dated 14.10.2015 passed by the Second Respondent is set aside by this Court for the reasons assigned in this Writ Petition. Further, the Second Respondent is directed to take up the appeal of the Petitioner dated 23.09.2015, once-again and to pass necessary orders in the manner known to Law and in accordance with Law (of course after providing enough opportunity to the Petitioners and others concerned, if any, in the subject-matter in issue, by following the principles of natural justice in true letter and spirit) within a period of eight weeks from the date of receipt of a copy of this order. It is open to the Petitioners to raise all factual and legal pleas before the Second Respondent/The District Registrar (Admn.) (i/c), St. Marks Street, Palayamkottai, Tirunelveli and it is needless for this Court to clearly point out that the Second Respondent shall at the time of passing the fresh order in the appeal is to advert to each and every plea/averment made by the Petitioners in the appeal and to answer the same keeping in view of the well-established principles of Law. The Petitioners are directed to lend their assistance/co-operation to the Second Respondent, so as to enable the latter to dispose of the appeal of the Petitioner afresh within the time stipulated by this Court. In case, if the Second Respondent is in requirement of any copy or record/document(s) from the Petitioners, then the Second Respondent shall cause a notice or issue a memo to the Petitioners and on receipt of the same, it is incumbent on the part of the Petitioners to furnish the same. Upon furnishing of such records/documents, it is open to the Second Respondent to pass a fresh order in the appeal preferred by the Petitioners, of course within the time determined by this Court, as stated supra. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To

1. The Inspector General of Registration,
Santhome High Road,
Chennai.



2.The District Registrar(Admn.),
St.Marks Street,
Palayamkottai,
Tirunelveli - 627 002.

4.The Sub-Registrar,
Office of the Sub-Registrar,
Pettai, Tirunelveli - 627 004.

+1 CC to M/s.J.ASHOK, Advocate, SR No.40248

+1 CC to THE SPECIAL GOVERNMENT PLEADER , SR No.40435

W.P (MD) No.13317 of 2016
and
W.M.P (MD) No.9995 of 2016
28.07.2016

vsn
SH/ARK-PV:08.08.2016:6P/7C