

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2017

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

WP.No.12052 of 2016

and

WMP Nos.10421 and 10422 of 2016

N.Senthil Kumar

...Petitioner

Vs

1. The Inspector of Police,
E-8, Kelambakkam Police Station,
Kanchipuram District.

2. D.Muthukumarasamy

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records of the first respondent culminating in missing certificate dated 30.09.2013 in CSR No.311 of 2013 on the file of the first respondent and quash the same.

For Petitioner : Mr.J.Sivanandaraaj for
Mr.V.Sankaranarayanan

For R1 : Mr.C.Emalias, APP
For R2 : Mr.V.Venkatasamy

ORDER

Challenging the non-traceable certificate dated 30.09.2013 issued by the first respondent in CSR No.311 of 2013, the present writ petition has been filed.

2. It is the case of the petitioner that he is the absolute and lawful owner of the vacant property along with his brother N.Ramachandran, comprised in S.Nos.451/1 and 452/2B1 at Sholinganallur Village, Kanchipuram District. Originally, the said property was purchased by his grandfather in the year 1976, who bequeathed the same in favour of the petitioner's father by way of a registered will. After the death of the grandfather, the property was in possession and enjoyment of the petitioner's father, who, in the year 2010, settled the same in favour of the petitioner and his brother and handed over all the original documents i.e., sale deed bearing Document No.1215 of 2013, patta etc. relating to the said property. While so, the second

respondent has lodged a complaint dated 16.09.2013 to the first respondent about the missing of the original sale deed bearing Document No.1215 of 1976. On receipt of the same, the first respondent has assigned CSR No.311 of 2013 and thereafter, issued non-traceable certificate on 30.09.2013. Based on the said certificate, the second respondent along with his wife and other persons, misrepresented themselves as owners of the said property before the Sub Registrar, Neelangarai and fraudulently created six settlement deeds. On coming to know about the same, the petitioner has come up with the present petition for the above stated relief.

3. Learned counsel for the petitioner produced the original sale deed relating to the year 1976 and submitted that without following due process of law, the first respondent has issued the non-traceable certificate dated 30.09.2013. Hence, the same is liable to be set aside.

4. Per contra, learned counsel for the second respondent submitted that there is no fraudulent act committed by the second respondent and others, as alleged by the petitioner, as they are the owners of the property in question.

5. This Court has also heard the learned Additional Public Prosecutor on the above submissions.

6. Admittedly, the first respondent has issued non-traceable certificate dated 30.09.2013 without following due process of law. As rightly argued by the learned counsel for the petitioner, if the first respondent did verify the encumbrance certificate before issuing such non-traceable certificate, the settlement deed registered in the year 2010 would have been brought to light, based on which, the first respondent would have called for the parties to the said settlement deed for enquiry and ascertained the genuineness of the contentions raised on either side. Though the learned counsel for the second respondent raised certain issues, this Court is of the view that the same are subject matters of the civil suit pending before the District Court, Villupuram. Thus, for the reasons stated above, this Court is inclined to set aside the order impugned herein.

7. Accordingly, this Writ Petition is allowed and the certificate dated 30.09.2013 issued by the first respondent is set aside. However, it is open to the petitioner and the second respondent to agitate their respective rights relating to the

property or the documents in question before the Civil Court concerned. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rk

To

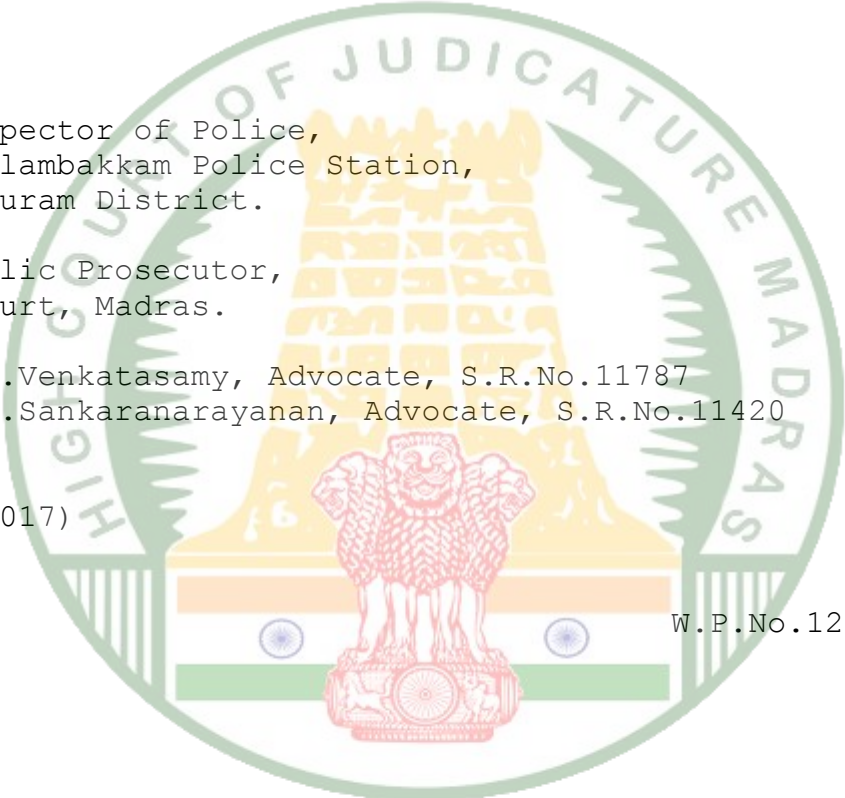
1. The Inspector of Police,
E-8, Kelambakkam Police Station,
Kanchipuram District.
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Venkatasamy, Advocate, S.R.No.11787

+3cc to Mr.Sankaranarayanan, Advocate, S.R.No.11420

SAI (CO)
RS (08/03/2017)

W.P.No.12052 of 2016

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red lion capital on a base. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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