

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.44457 of 2016

Mrs.Antoine Liliane Marie Gloria
rep.by her Power of Attorney Mr.Uthandi .. Petitioner

-VS-

1. The Sub Collector (Revenue) cum
Authorised Officer (Land Reforms)
Government of Union Territory of Puducherry
Puducherry
2. Antoinette Josephine Antoine
Wife of Antoine Arumainathan (late) .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Declaration, to declare that the notification issued by the first respondent declaring the property comprised in Survey No.392/2, 388/1, 392/1, R.S.No.22/3 admeasuring 0.93.85 Hectares situated at Subburayapuram, Karaikal, Puducherry as surplus by the Gazette Notification No.60 dated 29.08.2008 and the Gazette Notification No.95 dated 13.06.2016 as null and void.

For Petitioner :: Mr.R.Saravanan for
M/s Sai, Bharath and Ilan

ORDER

This writ petition has been filed by Mrs.Antoine Liliane Marie Gloria through her power of attorney to declare the impugned notification issued by the Sub Collector (Revenue) cum Authorised Officer (Land Reforms), Puducherry, the first respondent herein bearing Gazette Notification No.60 dated 29.08.2008 and the Gazette Notification No.95 dated 13.06.2016 as null and void.

2. This Court is not able to appreciate the arguments advanced by the learned counsel for the petitioner. According to the petitioner, when the property covered in Survey Nos.392/2, 388/1, 392/1, R.S.No.22/3 measuring 0.93.85 Hectares situated at Subburayapuram, Karaikal, Puducherry was the self earned property of her father and the same was in his exclusive

possession and enjoyment, the said property came to be settled way back on 24.3.70 in favour of the petitioner along with the relevant documents, as a result the petitioner has been in possession and enjoyment of the same. Subsequently, her father died on 6.4.95 leaving behind his wife Mrs.Mary Delphine Philominia Prosper, his mother Mrs.Adaikala Marie Savary Malayappa, son Mr.Robert Savary Malayappa and the petitioner herein as the legal heirs. Since the petitioner is residing in France, she had given power to her mother and appointed her as the power of attorney by a deed of power dated 7.10.96 and registered the same as Document No.152 of 1996 at the office of the Sub Registrar, Karaikal. In the said power of attorney, it has been specifically mentioned that the power is only in respect of the property inherited through her father only and not in respect of others. In the meanwhile, during the year 2005, the petitioner's mother, while staying with her, suffered hypertension with cerebro vascular accident with right hemiparasis and lost her memory power, therefore, she was advised to stay in India due to her illness. In India, when she was taking treatment at Dr.Madan Babu's clinic with the help of the second respondent, who is none other than the mother in law of the petitioner, the second respondent, utilizing the circumstances and ill-health of the petitioner's mother, executed a sale deed in respect of the property which had already been settled by the petitioner's father through the settlement deed. But after sometime, the petitioner's mother died on 27.6.2015 at France. While being so, utilizing the power of attorney in respect of the properties inherited from her father's favour along with other legal heirs dated 7.10.96, it is stated that the second respondent created a sale deed in her favour and got it registered as Document No.1278 of 2007 in respect of the land comprised in Survey Nos.392/2, 388/1, 392/1 in R.S.No.22/3 measuring 0.93.85 Hectares. Under this background, the grievance of the petitioner is that when the petitioner's mother had no power to deal with the property, the second respondent, who is only the mother in law of the petitioner, cannot create any sale deed. However, when she has sold the property in question, the present impugned notification has been issued showing that the entire land in question belongs to the second respondent and the said notification has also mentioned that seven items of properties are declared as surplus. As the petitioner is staying in France, she is not aware of all the transactions that had taken place behind her back. However, she is taking steps to challenge the sale deed by filing appropriate civil suit before the competent civil Court. In the meanwhile, the notification showing the property in question as belonging to the second respondent is liable to be declared as null and void, failing which the petitioner will be even losing the compensation to which she is legally entitled to.

3. As the petitioner till date has not questioned the sale deed executed by the second respondent in favour of third parties, without a locus to show that the property in question belongs to the petitioner, it is not open to the petitioner to seek for a declaration as prayed for in this writ petition. Therefore, the writ petition fails. However, it is open to the petitioner to work out her remedy in the manner known to law by filing appropriate civil suit before the competent civil Court. Only in the event of her success, it is open to her to take further legal course. With this liberty, the writ petition stands dismissed. Consequently, W.M.P.No.38302 of 2016 is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Sub Collector (Revenue) cum
Authorised Officer (Land Reforms)
Government of Union Territory of Puducherry
Puducherry

+1 cc to M/s.Saibharath & Ilan Advocate sr 101

W.P.No.44457 of 2016

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