



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.A. (MD) No.1461 of 2017

Hari Govindha Iyer Dharma Trust,
Chidambaram, Rep. by its
Managing Trustee
R.K.Kamalakaran

: Appellant/Petitioner

Vs.

1. The District Registrar,
The Office of the District Registrar,
Palace Road,
Madurai.

2. The Sub-Registrar (II),
The Office of the District Registrar,
Palace Road,
Madurai.

: Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order dated 27.01.2017 made in W.P. (MD) No.1325 of 2017.

Prayer in WP(MD)No.1325/2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, by directing the respondents to consider and dispose of the petitioner representation dated 09.01.2017 sent for the purpose of endorsing the petitioner objection in the official register maintained in the office of the respondents in respect of the properties situated at Door NO. 36, 3rd street, Lakshmipuram, Madurai.

For Appellant : Mr.M.Silambarasan

For Respondents : Mr.K.Guru,
Additional Government Pleader

**JUDGMENT**

[Judgment of the Court was delivered by M.VENUGOPAL, J.]

Heard both sides.

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2. No counter is filed on behalf of the Respondents 1 and 2.

3. The Appellant/Writ Petitioner has focussed the instant intra-Court Writ Appeal as an 'Aggrieved Person' as against the order dated 27.01.2017 in W.P.(MD)No.1325 of 2017 passed by the Learned Single Judge in dismissing the Writ Petition without costs.

4. Being dissatisfied with the order of dismissal dated 27.01.2017, in W.P.(MD)No.1325 of 2017, the Appellant/Writ Petitioner has filed the present Writ Appeal by taking a plea that the reasons assigned in the Writ Order are incorrect and in fact, the Learned Single Judge had committed an error in dismissing the Writ Petition.

5. The Learned Counsel for the Appellant projects an argument that nothing prevents the Appellant to voice his objections before the second Respondent Office and this vital aspect was not considered by the Learned Single Judge in a proper and real perspective.

6. Advancing his arguments, the Learned Counsel for the Appellant proceeds to point out that the Respondents/Government servants have an official duty and in the instant case, the right of the Appellant is not curtailed by any competent Court of Law and there is no fetter in law for receiving the objection of the Appellant by the Respondents.

7. Expatiating his contention, the Learned Counsel for the Appellant submits that the Appellant had inherited the Trusteeship as well as the hereditary Trustee of the Trust, due to his demise of his father and as of now, he is the Trustee and is bound to safeguard the interest and property of the Trust.

8. The Learned Counsel for the Appellant strenuously drives home a point that there is no embargo to institute a suit and the principle of '*res judicata*' will not apply in the present case.

9. The Appellant comes out with a version that the Suit in O.S.No.131 of 2014 was rejected and that the Appellant is taking necessary steps to continue the suit by filing an Appeal and in the meantime, the Defendants of the Suit and some other encroachers of the Trust property are making endeavour to create an encumbrance in respect of the Trust property, by using the concocted documents. Therefore, the Appellant was perforced to submit representations on 06.01.2017 and 09.01.2017 respectively before the second Respondent/Sub-Registrar, who is maintaining the Register for



lodging objections by the Aggrieved Party, for the purpose of preventing the unlawful and illegal registrations without having any valid right to alienate the property. In fact, the second Respondent had refused to even receive the same.

10. Lastly, it is the submission of Learned Counsel for the Appellant that allowing of the Appeal Suit in A.S.No.31 of 2000 by this Court, while setting aside the Judgment and Decree passed by the Learned First Additional Sub Judge, Madurai and dismissing the Original Suit filed by the Plaintiff therein (Writ Petitioner) would not stand in the way of the Appellant in submitting the representation dated 09.01.2017 before the concerned/competent authorities.

11. Conversely, it is the submission of the Learned Additional Government Pleader for the Respondents that the order of dismissal dated 27.01.2017 passed by the Learned Single Judge in W.P.(MD) No.1325 of 2017 is legally valid, perfect and it is a sound one. Therefore, this Court may not exercise its appellate jurisdiction by entertaining the Writ Appeal preferred by the Appellant/Writ Petitioner.

12. It comes to be known that the Appellant/Writ Petitioner filed O.S.No.610 of 1987 on the file of the Trial Court and that a Judgment was passed on 08.03.1999. Furthermore, in Appeals in A.S.Nos.727 of 1999, 699 of 1999 and 31 of 2000, dated 02.01.2008, the Judgment was passed by this Court. There is no two opinion of a very vital fact that in Original Suit in O.S.No.610 of 1987, a Decree was passed in part and in reality, in A.S.No.31 of 2000, the Decree of the Trial Court was set aside. The Appellant/Writ Petitioner has no right in regard to the properties, which were the subject matter of Suit and Appeal and notwithstanding that, he preferred an Execution Petition before the Learned Principal Sub Judge, Madurai and the fact of the matter is that the Decree passed in A.S.No.31 of 2000 is not an executable one. It transpires that Execution Petition was filed before the Executing Court obviously to execute the interlocutory order passed by this Court dated 14.12.2005 and that the Execution Petition was filed after the disposal of A.S.No.31 of 2000, whereby and whereunder, the Decree passed by the Trial Court was reversed by this Court. The Learned Single Judge, while dismissing the Writ Petition on 27.01.2017, at Paragraph No.6, had averred the following:

"6. On the strength of such fraudulent act in approaching the Principal Subordinate Court to execute the Decree of this Court in A.S.No.31 of 2000, the present representation has been made to the official respondents. Every thing is mischievous and the petitioner has approached this Court with a fraudulent intention by suppressing the nature of the Judgment of this Court, to get a favourable order to suit his convenience with an ulterior motive. The conduct of the petitioner is mischievous. Hence, I do not find any merit in this Writ



Petition. Hence, the Writ Petition is dismissed."

13. On going through the impugned order of dismissal dated 27.01.2017, in W.P.(MD)No.1325 of 2017, passed by the Learned Single Judge, this Court is of the earnest opinion that the same does not bristle with any legal infirmities. Viewed in that perspective, the Writ Appeal is devoid of merits.

14. In fine, the Writ Appeal is dismissed leaving the parties to bear their own costs. Resultantly, the order of the Learned Single Judge dated 27.01.2017 in dismissing the Writ Petition in W.P.(MD)No.1325 of 2017, is affirmed by this Court for the reasons assigned in this Appeal.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The District Registrar,
The Office of the District Registrar,
Palace Road,
Madurai.

2. The Sub-Registrar (II),
The Office of the District Registrar,
Palace Road,
Madurai.

+ 1 CC TO Mr.T.VADIVELAN, ADVOCATE IN SR No. 92308
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 92125

SML

TE/KK/SAR-3 : 27/12/2017 : 4P/5C

Judgment made in
W.A. (MD)No.1461 of 2017
Dated: 11.12.2017