



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2017

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.P. (MD) No.8283 of 2017

and

WMP (MD) No.6342 of 2017

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Nagasamy @ Satish

: Petitioner

-vs-

1.The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai-600 028.

2.Gokulam Finance Company
represented by its Partner
Sengottaiyan
4th Cross Road,
Thailambigai Nagar,
Thiruchengode, Namakkal District.

3.B.Johnson

4.B.Vinson

5.The District Registrar,
Velunachiyar Building,
Dindigul District,
Dindigul-624 004.

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, to quash the impugned order made in Na.Ka.No.5325/A3/2016, dated 03.02.2017 passed by the 5th respondent and consequently, forbear the respondents 3 and 4 from interfering with the peaceful possession of the petitioner's land compromised in S.No.281/5, measuring to an extent of 0.83 cents and 281/7A measuring to an extent of Acre 3.19 cents, situated at Oruthattu Village, Nilakottai Taluk, Dindigul District.

For Petitioner

: Mr.A.Jeenasenan
for Mr.S.Sethuraman

For R1 and R5

: Mr.C.Selvaraj
Special Government Pleader

For R3 and R4

: M/s.J.Anandhavalli

For 2nd Respondent

: No appearance

ORDER

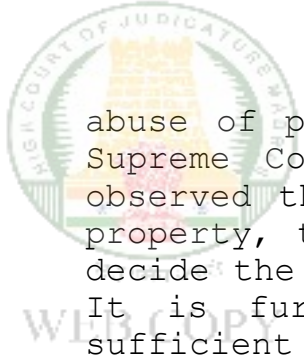
Challenge in this writ petition is the order passed by the 5th respondent in Na.Ka.No.5325/A3/2016, dated 03.02.2017 and consequently, forbear the respondents 3 and 4 from interfering with the peaceful possession of the petitioner's land comprised in Survey No.281/5 to an extent of 0.83 cents and in Survey No.281/7A to an extent of 3 Acre and 19 cents, situated at Oruthattu Village, Nilakottai Taluk, Dindigul District.

2.The case of the petitioner is that originally the lands comprised in Survey Nos.281/5 and 281/7A measuring to an extent of 0.83 cents and 3 Acres and 19 cents respectively, situated at Oruthattu Village, Nilakottai Taluk, belonged to one N.Dhanabalan, by virtue of a sale deed, dated 20.10.1993. Subsequently, he sold the property to one Barnabas, the father of the respondents 3 and 4 through a deed of sale, dated 25.07.1995. Thereafter, on 26.07.1995, the said Barnabas entered into an agreement of sale with the 2nd respondent agreeing to sell the property for a sum of Rs.1,70,000/- and also received Rs.1,35,000/- towards advance.

3.The petitioner would claim that on the same day i.e., on 26.07.1995, the said Barnabas executed a registered power of attorney to and in favour of one Palanisamy, the 2nd respondent herein and who in turn sold the properties by way of two sale deeds, dated 26.05.2003 in favour of N.Dhanabalan, the father of the petitioner.

4.The petitioner would further claim that from 1997 till 2003, the 2nd respondent had been in continuous possession and enjoyment of the property and thereafter, from 2003 the father of the petitioner was in continuous possession of the property, till he died in the year 2013. It is further stated that the respondents 3 and 4 herein along with their mother and sisters instituted a suit in O.S.No.442 of 2008 for declaration of their title and for permanent injunction. In the suit, the 2nd respondent filed an application in I.A.No.847 of 2011 under Order 7 Rule 11 CPC to reject the plaint, which was allowed on 04.09.2012 and the order has reached finality. It is also contended that the respondents 3 and 4 have filed another suit in O.S.No.106 of 2015 before the District Munsif Court, Nilakottai and the same is pending disposal. However, suppressing the material facts, a criminal complaint was lodged against the petitioner and based on the complaint given by the 3rd respondent, FIR Nos.67 of 2013 and 75 of 2015 stand registered, the respondents 3 and 4 have filed writ petitions in W.P.(MD)Nos.19805 of 2015 and 17294 of 2016 seeking direction to the authorities to cancel the sale deeds executed between the year 1997 and 2003.

5.Mr.A.Jenasenan, learned counsel for the petitioner would submit that the respondents 3 and 4 by playing fraud upon the court had obtained orders in the above writ petitions, which is clear



abuse of process of law. It is further contended that the Hon'ble Supreme Court in the judgment reported in 2016(10) SCC 767 has observed that if there is any dispute with regard to title of the property, the Registering Authority have no quasi-judicial power to decide the issue and it has to be referred only to the civil court. It is further contended that the petitioner was not provided sufficient opportunity to place all the materials before the 5th respondent and therefore, the impugned order is liable to be set aside on the sole ground of violation of principles of natural justice.

6.Per contra, Ms.J.Anandavalli, learned counsel for the respondents 3 and 4 would submit that the prayer sought for in the writ petitions are different; that as per the direction issued by this court in W.P(MD)No.19805 of 2015, the 5th respondent conducted enquiry and passed an interim order, dated 15.03.2016 deferring the proceedings, in view of the pendency of the writ petitions filed challenging the Circular No.67 and that after the validity of the circular was upheld by this court, the second writ petition came to be filed and therefore, there is willful suppression of material facts.

7.It is further contended that the property in dispute was originally owned by the father of the petitioner namely Dhanabalan and he sold the property to the father of the respondents 3 and 4 namely Mr.Barnabus, by a sale deed dated 25.07.1995 and on the very next day, the Power of Attorney was executed in favour of one Palanisamy. Admittedly, the principal passed away on 02.03.1996, but suppressing the death of the principal, the power agent sold the property to the 2nd respondent on 12.12.1997 and the order passed in I.A.No.847 of 2011 in O.S.No.442 of 2008 would not stand in the way of the respondents 3 and 4 to approach the official respondents seeking cancellation of the sale deed, as per Circular No.67/2011, dated 03.11.2011.

8.I have heard Mr.A.Jenasenan, learned counsel for the petitioner and Mr.C.Selvaraj, learned Special Government Pleader for the respondents 1 and 5 and Ms.J.Anandavalli, learned counsel for the respondents 3 and 4 and perused the materials available on record.

9.Perusal of the impugned order reveals that Mr.Sengottaiyan, who represented the 2nd respondent could not appear for enquiry on 21.11.2016 due to his ill-health and sent a letter seeking one month time and on behalf of the petitioner, one Advocate appeared for enquiry on 26.12.2012, but he did not file Vakalath and for the hearing on 09.01.2017 the notice sent to the petitioner was returned 'unserved'.

10.The main grievance of the petitioner is that he was not provided sufficient opportunity to place the entire facts and materials before the 5th respondent and the impugned order came to be passed, accepting the case of the respondents 3 and 4. Though



serious allegations and counter allegations have been made by the petitioner as well as the the 5th respondent, considering the issue involved in this writ petition, at this juncture, no finding is required to be passed on those aspects.

11. Considering the grievance expressed by the petitioner and taking note of the facts of the case and to meet the ends of justice, this court is of the considered opinion that the matter requires reconsideration by the 5th respondent.

12. In that view, the writ petition is **allowed** and the impugned order, dated 03.02.2017 passed by the 5th respondent is set aside and the matter is remitted back. The 5th respondent shall pass orders afresh, after providing opportunity to the petitioner as well as to the necessary parties, if any and pass orders, purely on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order. It is made clear that the parties are entitled to produce all the supporting documents before the 5th respondent at the time hearing. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

TO

1. The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai-600 028.

2. The District Registrar,
Velunachiyar Building,
Dindigul District,
Dindigul-624 004.

+1cc to Mr.S.Sethu Raman Advocate in SR. NO.66460
+1cc to M/s.J.Anandhavalli Advocate in SR. No.66449
+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.66558

ER

JS/MR.KKR/SAR.2/16.08.2017/ 4P-6C

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