



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

W.P(MD)No.2291 of 2011

S.Kaja Moideen

... Petitioner

Vs.

1.The District Registrar,
O/o. District Registrar,
Court Campus, Pudukottai.

2.The Sub-Registrar,
Illuppur Sub -Registration Office,
Pudukottai District.

2.The Wakf Inspector,
Tamil Nadu Wakf Board,
Pudukottai.

... Respondents

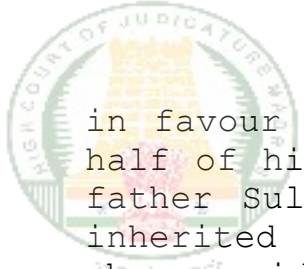
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the first and second respondents to consider the representation dated 28.01.2011 and direct the respondents to register the Sale Agreement dated 05.11.2009 in respect of the immovable properties in Survey Nos.346/2, 346/3, 346/4, 343/1A, 343/1B situated in Ennai Village Illuppur within the limits of the Sub Registration Office, Illuppur, Pudukottai District.

For Petitioner	: Mr.D.Shanmugaraja Sethupathi
For R1 & R2	: Mr.M.Alagadevan Special Government Pleader
For R3	: Mr.K.K.Senthil

O R D E R

The writ petition has been filed for issuance of a Writ of Mandamus directing the first and second respondents to consider the representation dated 28.01.2011 and to register the sale agreement dated 05.11.2009 in respect of the properties in Survey Nos.346/2, 346/3, 346/4, 343/1A and 343/1B situated at Ennai Village, Illuppur within the limits of the Sub Registration Office, Illuppur, Pudukottai District.

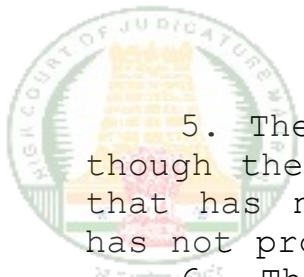
2. The petitioner would among other things aver that the petitioner's father Suldhan Mohamed and his brother Thathamiya Rawthar jointly owned ancestral property in Survey No.345 to the extent of 1.98 acres and Survey No.346 to the extent of 7.22 acres situated at Ennai Village, Illuppur, Pudukottai District. The above said Thathamiya Rawthar has executed a settlement deed



in favour of his sons Mohamed Ali and Abdul Salaam in respect of half of his undivided share. After the demise of the petitioner's father Suldan Mohamed, the petitioner and other legal-heirs have inherited the remaining half of the property. Subsequently, the above said property was sub-divided and re-survey numbers were allotted and the Revenue official has issued the joint Patta in favour of his family members as the above property is joint family property.

3. The petitioner further aver that the other legal-heirs of the petitioner's father and the legal-heirs of Thathamiya Rawther have executed a general power of attorney in favour of the petitioner authorising to dispose or make encumbrance in respect of the properties in Survey Nos.343/1A, 344/1D, 344/2, 344/4, 344/6, 346/2 and 344/1B to the extent of 5.88 acres. The power of attorney deed was registered on 15.09.2009 with the second respondent. He is also one of the joint owners of the above said properties. On the basis of the power of attorney, dated 15.09.2009, the petitioner entered into a sale agreement with one Mr.Arumugam. The second respondent has also received a sum of Rs.200/- towards registration fee and issued receipt for having received the amount. Thereafter, the second respondent has refused to register the sale agreement. Hence, the petitioner has caused a legal notice dated 22.02.2010, to the first and second respondents requesting to register the document. Subsequently, the first respondent has sent a letter dated 03.03.2010 to the petitioner's advocate stating that information in this regard is sought from the second respondent. Mr.Sahul Hameed has sent an application under the provisions of Right to Information Act seeking information as to why the sale agreement is not being registered by the second respondent. In response to the same, the first respondent has communicated a letter purported to be sent by the third respondent to the second respondent, wherein it has been stated that the properties in Survey Nos.346 and 345 are belong to Nawab Pallivasal and therefore, there should not be any registration in respect of the above properties situated in Illuppur Village. Thereafter, the petitioner has sent a representation dated 28.01.2011 to the first and second respondents stating that they do not have any authority to go into the question of title over the property at the time of registering the document.

4. The learned counsel for the petitioner would submit that once the document is given for registration, it is for the authority to register the document and they do not have any right to decide the title over the property. He would further submit that the action of the respondents 1 and 2 in not registering the document presented by the petitioner is against the statutory provision under the Registration Act and if any document is presented in before the Registering Officer for registration, he is bound to register the document without going into the title over the property.



5. The learned counsel for the respondents would submit that though the title deed Nos.504 and 418 covers the Survey Numbers, that has not been produced before this Court and the petitioner has not produced any document to the satisfaction of the Court.

6. The learned counsel for the petitioner relied on the judgment of the Division Bench of this Court reported in 2017 (3) CTC page 135 (Sudha Ravi Kumar v. The Special Commissioner & Commissioner, H.R. and CE Department), wherein in paragraph 14, the learned Judge has concluded as follows:

"14. As we have already dealt with, holding a limited Enquiry under this provision is to prima facie satisfy the conscience of the Registering Authority that there is substance in the objection made by the Religious Institution and if on such Enquiry, the registering Authority is satisfied that the objections of the Religious Institution have got substance, then the registering Authority shall pass an Order refusing to register the document and thereby it would be available for the parties concerned to make a Statutory Appeal under the Act. Similarly, if he registers the document, then it is for the Religious Institution to establish the title in the manner known to law. On the refusal of the registering Authority under Section 22-A of the Act, even without availing the right of appeal, it would be open for the parties concerned to approach the Civil Court to establish their title."

7. In the instant case, there is no final order passed by the registering authority and therefore, (it is suffice) for the limited purpose of satisfying the issues of the registering authority, it is enough to send notice to both the parties and thereafter, the registering authority shall enquire into the matter based on the materials available whether to register or not and pass orders in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

8. The writ petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To

1. The District Registrar, O/o. District Registrar,
Court Campus, Pudukottai.

2. The Sub-Registrar, Illuppur Sub -Registration Office,
Pudukottai District.

+One cc to Mr.D.Shanmuga RajaSethupathi, Advocate, SR.No.64310

+One cc to Mr.K.K.Senthil, Advocate, SR.No.64632

+One cc to The Special Government Pleader, SR.No.64681