



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

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W.P. (MD) .No.18359 of 2013

M.S.Kanadasan

.. Petitioner

.Vs.

1.The Special Deputy Collector (Stamp),
Trichy.

2.The Sub Registrar,
Krishnarayapuram,
Karur District.

3.Palaniammal

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pursuant to order passed by the 1st respondent in தப(சு3)/3434/2010 dated 07.03.2013, quash the same and consequently directing the 2nd respondent to return the petitioner's documents.

For Petitioner : Mr.M.Subash Babu

For Respondents : Mr.K.Guru, (for R1 and R2)
Additional Government Pleader

Mr.V.Singan (for R3)

O R D E R

The petitioner has filed this writ petition for the issuance of Writ of Certiorarified Mandamus or any other order or direction in the nature of writ calling for records pursuant to order passed by the 1st respondent in தப(சு3)/3434/2010 dated 07.03.2013 and quash the same as illegal and consequently directing the 2nd respondent to return the petitioner's documents.

2.The case of the petitioner is that he has purchased some stretch of property in S.No.122/2 measuring 0.98 cents in Krishnarayapuram Village, Karur District from his vendor namely Kamachi. The petitioner's vendor traced her title vide a settlement in her favour of the said property by her parents. The petitioner has purchased the said property for a valuable consideration by executing a Registered sale deed on 04.10.2010 before the 2nd respondent herein vide document No.1882 of 2010.



Thereafter the execution of the sale deed, the property was alleged to be undervalued and hence the original deed was referred by the 2nd Respondent under Section 47(A) (i) of the Stamp Act to the 1st Respondent for action at his end.

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3.The petitioner submits that in the meanwhile the 3rd respondent namely Palaniammal claimed herself as the owner of the above said property, on the strength of a sale deed executed by his vendor's namely Jeyaraman and Shiyamala, has made a representation before the Revenue Officials herein stating that some erroneous entries in the Revenue Records in respect of the above said property has been made by the erstwhile Village Administrative Officer and prayed to restore the records as it was before the UDR Survey. She has also filed W.P.No.1293 of 2012 before this Court with the prayer to direct the Revenue Officials to consider her claim. The 3rd respondent stating the pendency of the W.P.No.1293 of 2012 before this Court, made a representation to the 1st respondent herein and raised her objection to release the Subject document in 1882 of 2010. In this background the impugned order came to be passed by the 1st respondent, directing the 2nd respondent to trace title of the property and with further instruction to submit a report in this regard. The said order is challenged in this writ petition.

4.The learned counsel for the petitioner submitted that the order of the 1st respondent is liable to be set aside inlimini, in the light of the orders of this Court reported in 2013 (1) CWC 704 and 2015 (1) CWC 523, wherein this Court after an elaborate discussion on the powers and duties of the registering authority in respect of a document been referred under Section 47(A) (i) of the Stamp Act, held that the registering authority have no power/authority to withhold such document.

5.The learned counsel for the petitioner on having reliance upon the Reported judgments of this court stated supra, further contended that the Registering Authority has not to decide disputed questions of title and the registering authority cannot retain a document either on that ground or under 47(A) (i) of the Stamp Act.

6.The learned counsel for the petitioner submitted that in any case, the registering authority should have released the document of this petitioner after carrying out corresponding entries under Section 54 and 55, so as to create charge of the property, till recovery of deficit stamp duty. The act of retaining the document by the 2nd respondent as well as the 1st respondent is unsustainable.



7. The respondents 1 and 2 filed counter and contented that the property is undervalued, hence the document was rightly referred under Section 47(A)(i) of the Stamp Act and the corresponding proceedings initiated. Further it was contented that the original document has to be retained by the 1st respondent till the deficit stamp duty is collected from the petitioner.

8. The 3rd respondent filed counter contending that the petitioner's vendor have no title over the property and therefore have no right to deal with the same. Hence the document is liable to be retained. She further contended that the above said deed is being executed on the strength of a fraudulent entry made in the revenue records by the erstwhile Village Administrative Officer and hence an enquiry is liable to be conducted under circular number 67 of the Inspector General of Registration. Wherefore the petitioner cannot claim for return of the document registered.

9. I heard Mr. M. Subash Babu, learned counsel appearing for the petitioner and Mr. K. Guru, learned Additional Government Pleader, appearing for the respondents 1 and 2 and Mr. V. Singan, learned counsel appearing for the 3rd respondent and perused the entire records.

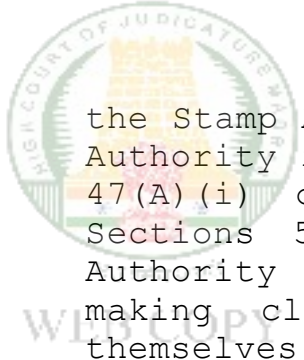
10. The points for consideration before this Court now is

i. Whether the registering authority can go into the disputed question of the title of a property?

11. Admittedly in the case on hand there is a title dispute. The petitioner claims title through the sale deed executed by his vendor namely Kamatchi, whereas 3rd respondent claim title through Jeyaraman, Shiyamala. Such being the factual position, the impugned order reflects a specific direction to the 2nd respondent to look into the title of the petitioner's vendor and decide it, which normally a Registering authority cannot do. It is only a civil court can decide upon a title dispute and decide upon rights and liabilities of the parties therein:

i. Whether a document referred under Section 47(A) (i) of the Stamp Act for under valuation of property can be retained by the registering authority till all the proceedings under Section 47(A) (i) of the Stamp Act becomes final or till the collection of the deficit stamp duty thereto?

12. This Court in plethora of decision has dealt and decided the scope, power and the duty of the registering authority in respect of the document being referred under Section 47(A)(i) of



the Stamp Act, whereby this Court repeatedly held that Registering Authority is bound to release such document referred under Section 47(A)(i) of the Stamp Act, after carrying out entries under Sections 54 and 55. This Court further held that Registering Authority cannot retain the original deed with them, besides making clear that the Registering Authority cannot convert themselves into civil courts and decide disputed question of title.

13. In view of the above said factual and legal discussions this court feels that the impugned order is liable to be set aside. Accordingly the impugned order is set aside.

14. In view of the aforesaid decisions of this Court reported in 2013 (1) CWC 704 and 2015 (1) CWC 523, the 2nd respondent is liable to be returned the petitioner's registered document. Therefore, the impugned order is liable to be set aside and accordingly, the same is set aside.

15. In the result:

(a) this writ petition is allowed by setting aside the order in jg(m3)/3434/2010 dated 07.03.2013 passed by the 1st respondent/ the Special Deputy Collector (Stamp), Trichy;

(b) the 2nd respondent is hereby directed to return the petitioner's Registered document;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1. The Special Deputy Collector (Stamp), Trichy
 2. The Sub Registrar, Krishnarayapuram, Karur District.
 +One cc to Mr.V.Singan, Advocate, SR.No.8830
 +One cc to Mr.M.Subash Babu, Advocate, SR.No.8686
 vs/skn
 RL/5C/4P/KP/SAR1/1/8/2017

order made in
 W.P. (MD) .No.18359 of 2013
 and
 M.P (MD) No.1 of 2013
15.02.2017
 (1/2)