

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1051 of 2013 and

M.P.No.1 of 2013

1.M.S.Venkatesan

2.S.Aranganathan

...Appellants

Vs

1.Buvaneshwari

2.The Sub-Registrar,
Sub-Registrar Office,
Kunrathur, Kancheepuram.

...Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent to set aside the order dated 10.04.2013 made in W.P.No.21944 of 2011.

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus direction the respondent to return the settlement deed dated 12.11.2010 registered as document No.PZO/000204 in Receipt No.2010164/3 on the file of the Respondent.

For Appellants : Mr.R.Syed Mustafa

For Respondents: Ms.Srividya Aravindhnan for R1
Ms.A.Sri Jayanthi, Spl.G.P. for R2

J U D G M E N T

(made by P.VELMURUGAN,J.)

The writ petition filed by the first respondent seeking return of the Settlement Deed was allowed by the writ court. Aggrieved against the order passed by the learned single Judge, the appellants have filed the present appeal.

2. The husband of the first respondent appears to have executed a Settlement Deed, dated 12.11.2010 settling the vacant land to an extent of 3.01 cents comprised in S.No.513 and another extent of 2.00 acres in S.No.523/2 in 68, Mangadu Village, Sriperumbudur Taluk, Kancheepuram District in her favour.

3. The appellants have filed a suit in O.S.No.124 of 2010 against the husband of the first respondent on the file of District Munsif Court, Sriperumbudur, for permanent injunction restraining him from in any manner alienating or encumbering the suit property either by sale, mortgage, agreement of sale or settlement or otherwise. In the said suit, an application in I.A.No.483 of 2010 was filed for injunction restraining the husband of the first respondent from alienating or encumbering the property to any third party. Another application in I.A.No.484 of 2010 was filed for restraining the second respondent from admitting any kind of document viz., Sale Deed, Mortgage, agreement of sale, settlement etc., if any, presented before the second respondent by the husband of the first respondent. The learned District Munsif dismissed the application in I.A.No.483 of 2010. As against the order dismissing the injunction application, C.M.A.No.15 of 2010 was filed before the Subordinate Court, Kancheepuram. The same was allowed by order dated 22.01.2011. On the strength of the order passed by the Sub-Court, the first respondent filed a writ petition in W.P.No.21944 of 2011. The writ petition was allowed by the learned single Judge and a direction was issued to the second respondent to return the document, within a period of six weeks from the date of receipt of the order. Hence, the appellants are before us.

4. Heard the learned counsel for the appellant and the learned counsel on behalf of the respondents. We have also perused the records.

5. It is the case of the appellant that originally the subject land belongs to their father. The father of the appellants died intestate on 22.04.1999, leaving behind the appellants as his legal representatives. After the demise of the appellant's father, they got transfer of records and patta in their names. The appellants have been paying the kist in respect of the suit properties. The suit properties are vacant land and were not used for cultivation for the past more than 10 years. While so, the appellants came to know that patta was changed in the name of a third party viz., Palani without notice to them. Hence, they filed a suit against the said Palani. In the mean while, a Settlement Deed was executed by the said Palani in favour of the first respondent and the same was presented before the second respondent for registration. Since objection was raised by the appellants, the second respondent has not released the document. Hence, the first respondent filed the writ petition to release the document. The learned single Judge without considering the background facts and the civil dispute pending before the Sub-Court, allowed the writ petition.

6. It is a matter of record that both the parties have

filed suits independently against each other and the same are stated to be pending. Till the Civil Suits are decided one way or the other, the second respondent is directed to hold the document presented by the first respondent. After the disposal of the civil suits, the second respondent is at liberty to release the document in the light of the decree.

7. The writ appeal is disposed of with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

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To

The Sub-Registrar,
Sub-Registrar Office,
Kunrathur, Kancheepuram.

+1cc to Mr.R.Syedmustafa, Advocate SR.No.55
+2cc to Mr.M.Aravindan, Advocate SR.No.175
+1cc to Government Pleader SR.No.165

W.A No.1051 of 2013

GMR(CO)
GN(20/02/2018)

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