

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.15097 of 2013

G.Sabhapathy

.. Petitioner

Vs.

1.The District Registrar,  
Registration Department,  
Salem District.

2.The Sub Registrar,  
Jalagandapuram,  
Salem District.

3.The Joint Registrar,  
Hindu Religious and Charitable  
Endowment Department, Salem.

.. Respondents

(R-3 suo motu impleaded as per  
order dated 27.02.2018  
in W.P.No.15097 of 2013)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to register the property in Survey No.494 Iruppali Village, Salem District for conveyance in favour of third parties as intended by the petitioner.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.N.Manikandan

Government Advocate for R1 & R2

Mr.M.Maharaja,

Special Government Pleader (HR & CE) for R3

O R D E R

Heard Mr.V.Raghavachari, learned counsel for the petitioner; Mr.N.Manikandan, learned Government Advocate for respondents 1 and 2; Mr.M.Maharaja, learned Special Government Pleader (HR & CE) for the third respondent and perused the materials available on record.

2. The petitioner has come forward with this Writ Petition for issuance of Writ of Mandamus, directing the respondents to register the sale deed in respect of the property in Survey No.494 Iruppali Village, Salem District for conveyance in favour of third parties as intended by the petitioner.

3. According to the petitioner, the property measuring an extent of 3.49.0 hectares at Iruppalli Village, Salem District in Survey No.494 was originally purchased by his ancestors and in a family partition, it was allotted to him in the year 1980. Subsequently, he was issued with a patta in the year 2013. The petitioner would claim that he mortgaged the property with the Co-operative Bank while availing the financial assistance and hence, the objection raised by some persons that the property belongs to Arulmigu Kailasandhar Temple has no merit.

4. The grievance of the petitioner is that the sale deed dated 11.04.2013 presented by him was not registered by the second respondent on the basis of the proceedings of the District Collector, Salem.

5. The second respondent has filed a detailed counter refuting the allegations of the petitioner and it is categorically stated that the Arulmigu Kailasandhar Temple owns land measuring an extent of 350 acres in various Survey Numbers in Iruppali Village, Edappadi Taluk, which was encroached by various persons and hence, necessary instructions were issued by the District Collector, Salem to the Registration Department not to register any documents with regard to survey numbers, including the Survey No.494. The second respondent after verifying the Survey Number and document presented by the petitioner dated 11.04.2013, refused to register the document. It is further stated that since the land belongs to the Temple, it is not possible to register the document of the petitioner and prayed for dismissal of the Writ Petition.

6. The issue involved in this Writ Petition is no longer res integra. As the Division Bench of this Court in Sudha Ravi Kumar v. The Special Commissioner & Commissioner, HR & CE Department, [2017 (3) CTC 135] has categorically held that if the Registering Authority refuses to register the document on the basis of objection of the Temple, the parties have to approach the Competent Civil Court to establish their right. The relevant paragraph would run thus:-

"23. .... Similarly, simply because the some lands were shown as the properties belonging to the religious institution in the register maintained by the temple, it cannot be construed that the said land belongs to the said religious institution. It needs to

be noted that the register of properties under Section 29 was prepared not after notice to the interested persons. It was done unilaterally by the religious institution. Similarly, the maintenance of the register by updating the same is also not done after notice to the parties who are interested in the property which is included in the register after the preparation of the original register. Thus, the preparation as well as the maintenance of the register is by the unilateral act of the religious institution and therefore likelihood of the private lands belonging to any individual being included in the register by error cannot be ruled out. All these issues are to be resolved by the Civil Court. Therefore, in our considered view, once patta has been issued under either the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 and the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 it is for the temple to establish its title before the Civil Court. The registrar is bound to act on the basis of the ryotwari patta issued by the authority concerned and he shall not refuse to register the said deeds. As we have already pointed out the remedy for the religious institution is to approach the civil court for appropriate remedy.

....

25.

(i) to (iii) ....

(iv) If the registering authority refuses to register the document acting on the objections raised by a religious institution under Section 22-A of the Registration Act, the parties to the deed will be at liberty to straightaway approach the Civil Court for declaration of title and other relief without availing the opportunity for filing a statutory appeal."

7. In the case on hand, though the petitioner claims to be the absolute owner of the property on the basis of the mortgage deed and partition deed, it is a specific case of the Registering Authority that the land in Survey No.494 belongs to Arulmigu Kailasandhar Temple.

8. In the light of the stand taken by the respondents and the observations made by the Division Bench of this Court in the case Sudha Ravi Kumar v. The Special Commissioner & Commissioner, HR & CE Department, no positive direction can be issued as sought for in the Writ Petition. It is up to the petitioner to establish his right before the Competent Civil

Court. Accordingly, the Writ Petition fails and the same is dismissed. There is no order as to costs.  
r n s

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Registrar,  
Registration Department,  
Salem District.
- 2.The Sub Registrar,  
Jalagandapuram,  
Salem District.
- 3.The Joint Registrar,  
Hindu Religious and Charitable  
Endowment Department, Salem.

+1cc to Mr.V.Raghavachari, Advocate S.R.No.14880

+1cc to the Government Pleader, S.R.No.15915

KR/25/10/18

W.P.No.15097 of 2013

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