

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 29.11.2018
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM
WA.No.2596/2018
&
CMP.Nos.21147 and 21148/2018

A.Karthik

..Appellant / Writ Petitioner

Versus

- 1 The Inspector General of Registration
No.100, Santhome High Road,
Pattinappakkam, Chennai - 600 028.
 - 2 The District Registrar (Registration Department)
Chenglepet Registration District,
Azhagesan Street, Chenglepet - 603 001.
 - 3 Smt.Bhagavathi Selvi,
The Sub-Registrar,
Office of the Sub-Registrar(Registration Department),
Cheyyur,
Cheyyur Taluk, Kancheepuram District.
- ...Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 21.06.2018 made in WP.No.35851/2016. Writ Petition filed to issue a writ of Mandamus directing the respondent to consider the representation, dated 14.07.2016 of the petitioner and pass orders on merits and in accordance with law, after affording opportunity of being heard to the petitioner.

For Appellant : Mr.B.Dayalan
For RR 1 to 3 : Mr.T.M.Pappaiah,
Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal and is disposed of by the following judgment. Mr.T.M.Pappaiah, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 3.

2.The only grievance expressed by the appellant/writ petitioner appears to be that the land admeasuring to an extent of 1.56 acres in Survey No.211/5 situate at Moogaiyur Village, Cheyyur Taluk, Kancheepuram District, still remain as an undivided property and the appellant/writ petitioner, his brother and sister want to sell certain portion of the undivided share and for that purpose, they executed a registered Power of Attorney dated 09.06.2016 and also paid a sum of Rs.10,000/- towards registration fee and however, the third respondent, vide communication dated 20.06.2006 directed them to pay the defecit stamp duty of Rs.20,000/- more and get the return of the document. The appellant/writ petitioner in this regard, has also submitted a representation dated 14.07.2016, praying for appropriate orders in the light of the contents of his representation, not to insist for additional stamp duty and alleging non response to the said representation, the appellant/writ petitioner had filed W.P.No.35851/2016. The said writ petition came to be dismissed vide impugned order dated 21.06.2018, on the ground of availability of the alternate remedy and challenging the legality of the order, the appellant/writ petitioner came forward to file this writ appeal.

3.The learned counsel for the appellant/writ petitioner has invited the attention of this Court to the to the G.O.Ms.No.39 issued by the Commercial Taxes and Registration (J2) Department dated 30.05.2014 and would submit that the demand of additional stamp duty of Rs.20,000/- vide communication of the third respondent dated 26.06.2016 is per se unsustainable and therefore, there is no necessity to avail the alternate remedy and prays for interference.

4.Per Contra, Mr.T.M.Pappaiah, learned Special Government Pleader appearing on behalf of the respondents 1 to 3 would submit that in the light of the communication of the third respondent dated 20.06.2016, the remedy open to the appellant/writ petitioner, if any, is to avail the alternate remedy and the said aspect has been considered and the writ petition came to be dismissed rightly and prays for dismissal of the writ appeal.

5.This Court has considered the rival submissions and also perused the materials placed on record.

6.A perusal of the registered Partition Deed dated 23.09.2013, registered as document No.3839/2013 on the file of the Sub-Registrar, Cheyyur, prima facie indicate that the Schedule mentioned properties have been divided among the sharers and though it is submitted by the learned counsel for the appellant/writ petitioner that there is no actual deviation by metes and bounds took place in respect of landed property in

Survey No.211/5. This Court is of the considered view that it is not within the jurisdiction of the 3rd respondent to adjudicate the said issue. As per G.O.Ms.No.39 dated 30.05.2014 the following Notification came to be effected.

''APPENDIX
NOTIFICATION

Under section 78 of the Registration Act, 1908 [Central Act XVI of 1908], the Governor of Tamil Nadu hereby makes the following amendments to the Table of Fees published with the erstwhile Judicial Department Notification No.177, dated the 30th March 1909, at pages 316 to 319 of Part I of the Fort St. George Gazette, dated the 30th March 1909, as subsequently amended:-

2 The amendments hereby made shall come into force on the 2nd June, 2014.

AMENDMENTS

In the said Table of Fees, in Article 1, in clause [a], in sub-clause [11]-

[1] In item [i], for the expression "levied on the consideration mentioned therein." the expression "the fee leviable on the considerations mentioned therein or the registration fee mentioned in clause (ii) (a) or clause (ii) (b), as the case may be, whichever is higher." shall be substituted; and

[2] to item (ii), the following proviso shall be added, namely:-

"Provided that when an instrument of power of attorney falling under either sub-item (a) or (b) above is executed by more than one person, who are neither co-owners by act of parties or co-parceners by operation of law, separate registration fee shall be levied in respect of each person at the rate prescribed under sub-item (a) or (b) above, as the case may be."

Paragraph 2 of the said G.O also gives the reason for the said amendment.

7. Since the Sub-Registrar already took a decision vide communication dated 20.06.2016, the remedy open to the appellant/writ petitioner, if any, is to assail the said Order and even otherwise, the learned Judge in the impugned order, has indicated that the appellant/writ petitioner is having an alternate remedy and this Court finds no error apparent on the face of the record or infirmity in the said reasons assigned by the learned Single Judge.

8.In the result, the writ appeal is dismissed, confirming the order dated 21.06.2018 made in WP.No.35851/2016. However, if the appellant/writ petitioner is so advised and if it is open to him under law, he is always at liberty to work out his remedy in accordance with law before the competent Forum. No costs. Consequently, the connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Inspector General of Registration
No.100, Santhome High Road,
Pattinappakkam, Chennai - 600 028.
- 2.The District Registrar (Registration Department)
Chenglepet Registration District,
Azhagesan Street, Chenglepet - 603 001.
- 3.Smt.Bhagavathi Selvi,
The Sub-Registrar,
Office of the Sub-Registrar(Registration Department),
Cheyyur,
Cheyyur Taluk, Kancheepuram District.

+1cc to Mr.B.Dayaalan, Advocate, S.R.No.82154

WA.No.2596/2018

MG(CO)

rrs 20/12/2018

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