



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.16797 of 2018

K.Kalibulla @ Kalibulla Ravuthar

... Petitioner

vs.

The Sub Registrar,
Anna Vasal,
Pudukottai District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records pertaining to the impugned order of the respondent in his proceedings in nil dated 10.07.2018 and consequently direct the respondent to register the document submitted by the petitioner as per the Section 17 of The Registration Act, within a stipulated time fixed by this Court.

For Petitioner: Mr.J.Jeyakumaran

For Respondent: Mr.M.Murugan

Government Advocate (Civil Side)

ORDER

The petitioner had purchased the property, comprised in Survey No.699/18 of Veerapatti Village, Mukkannamalaipatti, Iluppur Taluk, Pudukottai District, by a registered sale deed, dated 10.05.1969, vide document No.1-663 of 1969. In addition to that, he had also purchased another property, comprised in Survey No.704/5, measuring an extent of 0.02.50 Ares, of the same Village, under a registered sale deed, dated 16.04.1972, vide document No.1-401 of 1972. The petitioner has also obtained separate Pattas for the above said properties. The petitioner has also been paying property tax and other taxes in respect of the properties purchased by him.

2. On 14.06.2018, the petitioner submitted a document, <https://hcservices.ecourts.gov.in/hcservices/> namely, sale deed, before the respondent, proposing to sell the above properties to a third party. The petitioner had also paid



necessary stamp duty and other fees required for the registration of the sale deed. However, the respondent had refused to register the sale deed and returned the same by the impugned order, dated 10.07.2018. As per the impugned order, a suit in O.S.No.50 of 2018 was pending on the file of the learned District Munsif, Keeranur and the respondent / Sub-Registrar was also a party to the suit proceedings and as per the Standing Order 238(a), he was unable to register the document. The said order is put to challenge in this writ petition.

3. In response to the writ petition, a counter affidavit has been filed on behalf of the respondent. In the counter affidavit, the same reason has been set forth for not registering the document. In Paragraph No.5 of the counter affidavit, the following have been averred:

"5. I further submit that in the mean while the petitioner wants to sell the above said properties in favour of one Mr.Avabevetaj, W/o Nizamsulthan. Therefore he presented document by way of sale deed before the registering authority. The registering authority rejected the claim by way of issuing cheque slip by stating that the civil suit filed by legal heirs of the petitioners in O.S.No.50 of 2018 pending on the file of District Munsif Court, Keeranur. Wherein respondent arrayed as 5th defendant in the suit. It shows that there is a dispute between the petitioner and his legal heirs, namely son and daughters. Therefore, the respondent rejected to register the document presented by him stating that there is a civil suit with regard to above said survey numbers. Therefore then Sub Registrar has rejected the claim made by him to register the document."

4. At this juncture, the learned counsel for the petitioner would submit that as per the Standing Order 238(a), there must be an order from the Court restraining the Authority concerned from registering the document and in the instant case, there is no interim order passed by the Civil Court in the pending litigation. This fact has also been acknowledged by the learned Government Advocate (Civil Side) appearing for the respondent. Therefore, the learned counsel appearing for the petitioner would submit that in the absence of any order by any Civil Court prohibiting registration of documents, it is not open to the Authority concerned to return the documents. In the said circumstances, the impugned order passed by the respondent cannot be countenanced either in law or on facts.



5. Considering the arguments advanced by the learned counsel appearing for the petitioner as well as the learned Government Advocate (Civil Side) appearing for the respondent and also considering the contents of the Standing Order 238(a), this Court is of the view that the respondent cannot refuse to register the sale deed submitted by the petitioner, when there is no order from the Civil Court restraining him from registering the document. Although the said Standing Order has been relied on by the respondent, in the absence of any specific order from the Civil Court restraining him from registering the document, it is not open to the respondent to refuse to register the document, if the same is otherwise in order.

6. Admittedly, in the pending civil litigation, there is no interim order passed by the Civil Court, although the respondent is a party in the litigation. Hence, the respondent cannot rely on the Standing Order 238(a) for refusing to register the document. In the said circumstances, this Court is of the considered view that the petitioner has made out a case for grant of relief.

7. Accordingly, the writ petition is allowed and the impugned order, dated 10.07.2018, passed by the respondent, is hereby set aside and the respondent is directed to process the sale deed submitted by the petitioner and register the same, if it is otherwise in order. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Sub Registrar,
Anna Vasal,
Pudukottai District.

+ 1 CC TO MR.J.JEYAKUMARAN, ADVOCATE IN SR NO. 84870

KRK

BU/PM/SAR-II : 26.09.2018 : 2P/3C

W.P. (MD) No.16797 of 2018
18.09.2018