



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A(MD)No.1069 of 2018

WEB COPY

M.Maheshwaran ... Appellant/3rd Respondent
Vs.
1.Athirstalakshmi ... 1st Respondent/Petitioner
2. The District Registrar (Admin),
Tirunelveli District,
Palayamkottai,
Tirunelveli.
3. The Sub-Registrar,
Srivaikundam,
Tuticorin District. ... Respondents 2 & 3/
Respondents 1 & 2

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 18.06.2018 made in W.P(MD)No.12835 of 2018, on the file of this Court.

Prayer in WP(MD)No. 12835 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the entire record pertaining to the impugned notice order in NA.KA.No.763/A3/2018 dated 16.05.2018 issued by the 1st respondent and quash the same as illegal and consequently, direct the first respondent to pass orders directing the third respondent to approach the civil Court.

For Appellant : Mr.N.Anandakumar
For R - 1 : Mr.P.M.Vishnuvarthan
For RR 2 & 3 : Mr.M.Murugan,
Government Advocate.

JUDGMENT

(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)

Challenging the order passed in W.P(MD)No.12835 of 2018 on 18.09.2018, this writ appeal is preferred by the appellant/third respondent.



2. The said Writ Petition was filed by the first respondent/writ petitioner to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned notice, dated 16.05.2018 issued by the second respondent/District Registrar (Admin.) and quash the same.

3. The appellant/third respondent had given a representation, dated 08.02.2018 to the second respondent herein with respect to a sale deed registered in favour of the first respondent/writ petitioner dated 10.01.2018. Pursuant to the said representation, the first respondent/writ petitioner was issued with a notice dated 16.05.2018 to appear for an enquiry on 18.06.2018. The first respondent/writ petitioner also had filed her objections. While so, challenging the said notice, dated 16.05.2018, the first respondent/writ petitioner had filed the Writ Petition.

4. Admittedly, a civil suit in O.S.No.23 of 2018 is pending on the file of the District Munsif Court, Srivaikundam and the said suit is for partition and also for declaration that the sale deed registered in favour of the first respondent/writ petitioner is null and void. As the civil suit is for a comprehensive prayer, the learned Single Judge had directed the parties to work out their remedies in the pending suit and quashed the impugned notice, dated 16.05.2018 and disposed of the Writ Petition.

5. However, the appellant herein, who is the third respondent in the Writ Petition, has challenged the same on the ground that the dispute is not for the title of the first respondent/writ petitioner, but only with respect to certain boundary descriptions in the sale deed, which can be decided by the second respondent herein only.

6. The learned counsel appearing for the appellant/third respondent contended that after filing her objections to the enquiry notice, the first respondent/writ petitioner ought not to have moved this Court challenging the said notice. The learned counsel appearing for the appellant/third respondent further contended that enquiry is to be conducted based on the circular of the Inspector General of Registration, dated 08.11.2017.

7. Heard the learned counsel appearing on either side and perused the materials placed on record.

8. The contention of the learned counsel appearing for the appellant/third respondent is that mistakes have been committed in drawing the four boundaries of the property, which is a curable error. The second respondent is having the power, as per the circular of the Inspector General of Registration, dated 08.11.2017.



9. As the scope of the enquiry itself is very limited, the learned Single Judge may not have referred them to resolve the dispute in civil Court and ought to have directed the second respondent to consider the same. When an authority has to perform a public function or a duty and if there is a failure, a Writ Petition will lie under Article 226 of the Constitution of India. Merely because some disputed questions of fact arise for consideration, the same cannot be a ground to refuse to entertain a Writ Petition in all cases as a matter of rule.

10. In the light of the above, the order passed in W.P(MD)No.12835 of 2018 by the learned Single Judge is set aside and the parties are directed to appear before the second respondent herein pursuant to the notice, dated 16.05.2018. The second respondent is also directed to conduct enquiry as expeditiously as possible and dispose of the same within a period of four weeks from the date of receipt of a copy of this order. The parties are directed to co-operate with the second respondent in this regard.

11. In the result, the Writ Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The District Registrar (Admin),
Tirunelveli District,
Palayamkottai,
Tirunelveli.

2. The Sub-Registrar,
Srivaikundam,
Tuticorin District.

+1cc to Mr.N.Anandakumar, Advocate Sr.No.85217

PS

VB/RSK/SAR2/05.10.2018/3P/4C

W.A(MD)No.1069 of 2018
18.09.2018