



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2018

CORAM:

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P (MD) No.3140 of 2017
and
W.M.P (MD) No.2499 of 2017

B.Shajahan

... Petitioner

Vs.

1. The Inspector General of Registration,
Santhome High Road,
Chennai.
2. The District Registrar (Administration)
ST Marks Street,
Palayamkottai,
Tirunelveli- 627 002.
3. The Sub Registrar,
Office of the Sub-Registrar,
Pettai,
Tirunelveli- 627 004.
4. The Southern Regional Manager,
Thiruvadhurai Adheenam,
210, Mela Ratha Veethi,
Tirunelveli-627 006.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 03.07.2015 passed by the 3rd respondent and Impugned Appeal No.3/2016 dated 08.12.2016 passed by the 2nd respondent, to quash the same and consequently direct the respondents to register and release the sale deed kept as pending document No.29/2015 executed by the petitioner in respect of property situated in Survey No.15/1B, Vagaikulam Village, Tirunelveli Taluk and District.

For Petitioner

: Mr.K.Vallinayagam
Senior Counsel for Mr.J.Ashok
: Mrs.J.Padmavathi Devi,
Special Government Pleader
: Mr.Arun Jeyatram
for M/s.Rana Law Associates

For R1 to R3

**ORDER**

The writ petition has been filed, challenging the order passed by the second and third respondents refusing to register the petitioner's sale deed.

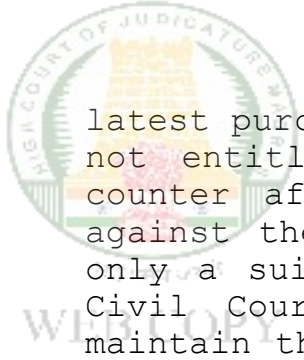
2.The case of the petitioner in brief is as follows.

The property in Survey No.15/1B belongs to one M.Raj and R.Leela Raj and they have purchased the property on 24.09.1992. Subsequently, patta was also mutated in their name. Originally the above property belongs to one Thiruvaduthurai Adheenam in Enam in Survey No.57/2 and 58/1. Before the Inam Abolition Act, 1963, Thiruvaduthurai Adheenam given possession of the above property by virtue of a registered "Karar Nama" in favour of one Essakiammal. Thereafter, Essakiammal sold the property to one Essakiyadum Perumalpillai on 13.07.1949. Thereafter, various transactions have taken place. Finally in the year 1992, M.Raj and R.Leela Raj purchased the property and applied for Ryotwari Patta before the Tahsildhar, Tirunelveli. During the enquiry, the manager of the Thiruvaduthurai Adheenam has given no objection for issuance of Ryotwari Patta to them. Thereafter, the property was sub divided and the patta has been issued in their favour.

3.Being aggrieved over the same, an appeal has been filed by the Thiruvaduthurai Adheenam before the Revenue Divisional Officer, Tirunelveli, which came to be dismissed, confirming the order passed by the Tahsildhar in the year 2003. Thereafter, the above said Raj and Leela Raj has formed a lay out and also got approval from the Local Planning Authority and Tirunelveli Municipal Corporation and they have sold the property to various persons, which was also registered by the third respondent. Now, the petitioner has purchased one of house sites from the said Raj. But the third respondent is refusing to register the same on the ground that the property belongs to Thiruvaduthurai Adheenam as per the circular No.33 issued by the IG registration dated 15.09.2010, the property cannot be registered.

4.Challenging the order, the petitioner filed an appeal before the second respondent. The Appellate authority after going into the question of title of the property, hold that the petitioner has no right or title over the property and dismissed the said appeal. Now challenging the above said order passed by the authority, the present writ petition has been filed.

5.The fourth respondent filed a counter affidavit stating that admittedly, Thiruvaduthurai Adheenam is the owner of the property and the Adheenam has only given a lease hold right to one Esakkiammal and she does not have any absolute right over the property, hence, the subsequent alienation made by the Esakkiammal is not valid. In the above circumstances, the petitioner being a



latest purchaser cannot claim title to the property and that he is not entitled to present the document for registration. In the counter affidavit the fourth respondent further states that as against the order passed under Section 72 of the Registration Act only a suit lies under Section 77 of the Act, 1908, before the Civil Court, and without filing a suit, the petitioner cannot maintain the writ petition before this Court. It is further stated in the counter affidavit that the property absolutely belongs to Thiruvaduthurai Atheenam, under the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 1963, and the above said land was converted into Ayan Punjai, and a patta issued in favour of Mutt, and the mutt only executed a lease agreement to one Esakkiammal, and she absolutely has no right to alienate the property. Hence, when the said Esakkiammal herself does not have any right to sell the property, the subsequent transactions are not valid. In the above circumstances, as the vendor of the petitioner has no title of the property, the registration was rightly refused by the second and third respondents.

6. The learned counsel appearing for the petitioner would submit that the respondents 2 and 3 have no power to go into the right/title of the property. The power of the Registrar to refuse registration of the document has been prescribed under Rule 55 of the Registration Rules. According to him, the above Rule is very clear that the registrar cannot deny the registration of the document on the ground that the executing party had no right to execute the document. But in the instant case, the second and third respondents have gone into the title of the property and held that the petitioner has no title over the property and refused to register the sale deed, which is totally without jurisdiction, hence, the petitioner is now constrained to approach this Court, challenging the same.

7. The learned counsel appearing for the fourth respondent has also relied upon the judgment of this Court in ***Shanmugham and 113 other Vs. Thiruvaduthurai Adheenam Madam*** reported in ***1997-1-L.W.287*** to support his case.

8. Per contra, the learned counsel appearing for the fourth respondent contended that Adheenam is the owner of the property, which was also admitted by the petitioner himself. Only the lease hold right was given to Esakkiammal in the year 1939, but using the same she has sold the property, for which she has no right and ultimately all the subsequent sale deeds are not valid. In the above circumstances, the respondents have rightly refused to register the sale deed.

9. The learned Counsel appearing for the fourth respondent further contended that the writ petitioner herein already filed an appeal under Section 72 of the Registration Act, 1908 before the second respondent challenging the order dated 03.07.2015 passed by the third respondent. Against the order passed under Section 72 of



the Registration Act, 1908, only a suit is maintainable under Section 77 of the Act and now the petitioner, without approaching the civil Court by filing the suit, cannot maintain this writ petition.

10. I have considered rival submissions and perused the records.

11. A perusal of the order passed by the second and third respondents, clearly shows that the respondents had gone into the question of title of the petitioner and had come to a conclusion that the petitioner has no right over the property and hence, he cannot present any document for registration. As rightly contended by the learned Senior Counsel, as per Rule 55 of the Registration Rules, the Registration authority cannot go into the validity of documents and rights of the parties to execute the documents. Rule 55 of the Registration rules reads as follows.

": ''Rule

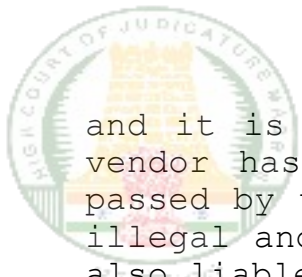
55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document, but he is bound to consider objection raised on any of the grounds stated below:-

- (a) that the parties appearing or about to appear before him are not the persons they profess to be.
- (b) that the document is forged.
- (c) that the person appearing as a representative assign or agent, has no right to appear in that capacity.
- (d) that the executing party is not really dead, as alleged by the party applying for registration, or
- (e) that the executing party is a minor or an idiot or a lunatic."

12. It is from the perusal of the above rule clear that the registering authority cannot decide the title of any person and he also cannot enquire into the validity of a document brought before him for registration. In the instant case, the third respondent has gone into the title of the property and he has given a finding that the petitioner's vendor has no title over the property and thereby refused to register the document.

13. This Court in a number of judgments has held that registering authority cannot refuse any document presented before him on the ground that the vendor has no right or title over the property and registrar also cannot conduct any enquiry regarding the ownership or the title of the vendor.

14. In the above circumstances, the respondent cannot refuse to register the document on the ground that the sale deed was executed by the person, who is not the real owner of the property



and it is not for the registering authority to verify whether the vendor has right to convey the property or not. Hence, the order passed by the authority below refusing to register the document is illegal and the order passed by the second and third respondents is also liable to be set aside.

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15.As regards the contention of the learned counsel appearing for the fourth respondent that an alternate remedy is available under Section 77 of the Registration Act, when the authorities have no jurisdiction to pass the order, the availability of the alternative remedy is not a bar for approaching this Court by way of filing this writ petition, under Article 226 of the Constitution of India. In view of the above, the impugned order passed by the respondent is liable to be set aside and is accordingly, set aside. This Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector General of Registration,
Santhome High Road,
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3. The Sub Registrar,
Office of the Sub-Registrar,
Pettai,
Tirunelveli- 627 004.

+ 1 CC TO Mr.J.ASHOK, ADVOCATE IN SR No. 47532
+ 1 CC TO Mr.P.ARUN JAYATRAM, ADVOCATE IN SR No. 47191
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 47640

RMI/VSG
TE/SV-MMS/SAR-4 : 06/04/2018 : 5P/7C