

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.6.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.19388 of 2016

A.Sankarmani

...Petitioner

-Vs-

- 1 The Inspector General of
Registration, No.100, Santhome Salai,
Mylapore, Chennai-28.
- 2 The District Registrar,
O/o.District Registrar, Cuddalore.
- 3 The Sub Registrar,
O/o.SRO Pudupettai, Panruti Taluk, Cuddalore
District.
- 4 Mr.SelvarajRespondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus Calling for the records in pursuance of check Slip No. 112/2016 dated 25.05.2016 on the file of 3rd respondent and quash the same and issue a direction to the 3rd respondent to register the sale deed dated 25.05.2016 in respect of Property in New Survey No. 96/3, Old Survey No.911 to an extent of 1.63 Acres (0.66.0 Ares) in Natham Village within Pudupettai Sub Registration District and Registration District of Cuddalore.

For Petitioner : Mr.R.Baskar

For R1 to R3 : Mr.P.Sanjay Gandhi
Additional Government Pleader

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner would state that he is an agriculturist and proposed to purchase a property in New Survey No. 96/3, Old Survey No.911 to an extent of 1.63 Acres (0.66.0 Ares) in Natham Village within Pudupettai Sub Registration District and Registration District of Cuddalore and when it was presented for registration before the third respondent, it was refused to be registered on the ground of pendency of A.S.No.341 of 2016 and further that the Appadurai Mudaliar became owner of the property through release deed and there are no documents show that Kesava Mudaliar became owner of the properties and therefore, the sale deed was returned. Challenging the said legality of the decree, the present writ petition is filed.

3. The learned counsel appearing for the petitioner would submit that the suit for declaration in O.S.Nos.57 and 60 of 1996 on the file of District Munsif, Panruti came to be decreed on 25.09.1998. Challenging the same, Thiruvalargal.Selvarj, Mohana and Krishnasamy has filed A.S.Nos.29/1998 and 30/1998 before the Sub-Court, Panruti. Both the appeals came to be dismissed for default and therefore, applications filed for restoration also were dismissed for default and the said Judgment has become final and thereafter, they filed O.S.No.63 of 2013 on the file of Principal District Judge, Cuddalore for partition and separate possession in which the defendants 3 to 13 had filed I.A.No.516 of 2013 for rejection of plaint and it was allowed. Challenging the legality of the same, the plaintiffs therein filed an appeal A.S.No.341 of 2016 on the file this Court and the same is pending. Since the order rejecting, the plaint is yet to be set aside in the manner known to law that the declaration of title by virtue of Judgment dated 25.09.1998 in O.S.Nos.57 and 60 of 1996 became final. The third respondent, has no right to return the sale deeds for want of title and also drawn the attention of this Court to the order dated 18.03.2011 made in W.P.No.4952 of 2011-K.S.VIJAYENDRAN VS. THE INSPECTOR GENERAL OF REGISTRARION, SANTHOME HIGH ROAD, SANTHOME, CHENNAI- 600 028 AND ANOTHER and prays for setting aside the order with a further direction directing the 3rd respondent to register the sale deed.

4. Per contra, Mr.P.Sanjay Gandhi, learned Additional Government Pleader, who accepts notice on behalf of official respondents would submit that as per the circular of the first respondent dated 25/2/S2/10 dated 21.6.2010, the third respondent is prima facie entitled to go into the title of the property and filed appeal suit in A.S.No. 341 of 2016 which is pending on the file of this Court and further stated that no documents evidencing to show that Kesava Mudaliar became the owner of the property, has rightly refused to reject the sale deed and prays for dismissal of the said suit.

5. This Court had considered the rival submissions and also perused the material available on record.

6. It is not in serious dispute that the suits in O.S.Nos. 57 and 60 of 1996 on the file of District Munsif, Panruti came to be decreed as early as 25.09.1998 for declaration of title of the plaintiffs herein with consequential reliefs and the appeals preferred against the said Judgment and Decree in A.S.Nos.29 and 30/1998 before the Sub-Court, Panruti came for dismissed for default and so also the restoration of the application and the said decree has become final and thereafter, Thiruvallargal.Selvarj, Mohana and Krishnasamy has filed O.S.No.63 of 2013 on the file of the Court of Principal District Judge, Cuddalore for the partition and separate possession of the very same property and defendants 3 to 13 in the said suit filed I.A.No.516 of 2013 for rejection of plaint and it was rejected, vide order and decree dated 30.10.2015. Challenging the same, the appeal is filed in A.S.No. 341 of 2016 is pending on the file of this Court.

7. The fact remains, the order rejecting the plaint is yet to be set aside.

The order dated 18.03.2011 in W.P.No.4952 of 2011-K.S.VIJAYENDRAN VS. THE INSPECTOR GENERAL OF REGISTRARION, SANTHOME HIGH ROAD, SANTHOME, CHENNAI- 600 028 AND ANOTHER Vs has laid down the proposition that it is not for the registering authority to satisfy about himself about the ownership and right of the property to enable him to execute the settlement deed and such a power can never be construed to be vested on the registering authority. He laid down the following proposition which reads as under:

" 12. On the facts of the present case, when the petitioner, being the husband, seeks to execute settlement deed in favour of his wife, it is not for the registering authority to satisfy himself about the ownership and right of the petitioner over the property to enable him to execute the settlement deed. Such power can never be construed to be vested on the registering authority either under the Act or the Rules or even as per the circular of the first respondent dated 15.9.2010, which only clarifies about the power of enquiry under Rule 55 of the Registration Rules in order to avoid registration of bogus documents. Thus, looking from any angle, I am of the considered view that the reasons given by the second respondent for not registering the document are untenable under any of the provisions of the Act. There is absolutely no reason for not registering the document which has been presented by the petitioner."

8. In the light of the facts and circumstances, this Court is of the view that the impugned order is unsustainable and therefore, is to be set aside. Therefore, writ petition is allowed and the impugned order of the 3rd respondent is set aside. The third

respondent is directed to register the sale deed subject to necessary requirements relating to stamp duty and registration charges and also satisfy about the person, who is presenting the document before him for registration as per the provisions of the Registration Acts and Rules. The second respondent shall complete the said exercise within a period of three weeks from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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To

- 1 The Inspector General of
Registration, No.100, Santhome Salai,
Mylapore, Chennai-28.
 - 2 The District Registrar,
O/o.District Registrar, Cuddalore.
 - 3 The Sub Registrar,
O/o.SRO Pudupettai, Panruti Taluk, Cuddalore
District.
- 1 cc to Mr.R. Baskar, Advocate, Sr. 30865

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