

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.2230 of 2016

S.Manoharan

.. Petitioner

Vs.

1. The District Registrar,
Tiruppur Registration District,
Tiruppur.
2. The Sub Registrar,
Kunnathur,
Avanashi Taluk,
Tiruppur District.
3. Murugayammal
4. Komarayal
5. Marathal
6. Lakshmi alias Vijayalakshmi
7. Ammasai Kutti
8. Kannammal
9. P.R.Subramanian
- 10.P.S.Kandasamy
- 11.Gowri
- 12.Babu Alias Palaniammal ** .. Respondents

** RR 7 to 12 are impleaded vide order
dated 29.03.2019 in WMP No.9218/2016

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Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent in his proceedings No.6276/A1/2015, dated 01.12.2015 and to quash the same with a direction directing the second respondent herein to register the sale deed dated 27.10.2015 executed by the respondents 3 to 6 herein in favour of the petitioner.

* * *

For Petitioner :Mr.A.K.Kumaraswamy, Senior Counsel
for Mr/S.Kaithamalai Kumaran

For Respondents :Mr.T.M.Pappiah,
Special Govt. Pleader (Regn.)
for RR 1 and 2

Mr.Parthikannan for RR 3 to 6

Mr.S.Parthasarathy for RR 7 and 8

O R D E R

The petitioner has laid challenge in this writ petition to the order of the first respondent dated 01.12.2015 and also sought for a direction to the second respondent to register the sale deed dated 27.10.2015 executed by the respondents 3 to 6 in his favour.

2. The case of the petitioner is that the third respondent is the wife and respondents 4 to 6 are the daughters of one Rasappa Gounder. One P.R.Subramanian, who is the ninth respondent herein, is the son of the third respondent and the said Rasappa Gounder. A property was purchased by the said Rasappa Gounder vide sale deed 19.07.1973 out of his own earnings, which devolved upon his legal heirs, after his death on 14.09.2001. The petitioner purchased 4/5th portion out of the entire extent of the land from respondents 3 to 6, which is their share in the property, vide the sale deed dated 27.10.2015 for a valuable sale consideration. When the sale deed was presented for registration, the second respondent refused to register it, inter alia, on the ground that the property was sold by the son of the deceased Rasappa Gounder to one Ammasai Gounder as per document No.681/2002. Hence, the vendors of the petitioners obtained legal heirship certificate and joint patta and represented the sale deed on 09.11.2015. But the second respondent refused to register the sale deed on the same ground that the property was already sold, which cannot be a ground for the second respondent to deny the registration.

3. It is stated that the petitioner, aggrieved by the order of the second respondent dated 09.10.2015, filed an appeal before the first respondent and sought a direction to the second respondent to register the sale deed, which was also summarily rejected by the first respondent via the impugned order dated 01.12.2015. Hence, the petitioner is before this Court.

4. The respondents 1 and 2 filed a counter-affidavit stating that on 28.10.2015 the alleged sale deed was presented for registration and the same was returned on the same day with checkslip on the grounds that (i) the legal heirship certificate was not annexed therewith ; (ii) the names of the vendors did not find a place in the Patta ; and (iii) there was an encumbrance with respect to the property, as one P.R.Subramanian, one of the legal heirs of the deceased owner, sold it to one Ammasaikutty. It is also stated that the

petitioner has submitted a representation stating that the said P.R.Subramaniam has no right to sell the entire extent and the sale by him does not bind his vendors. However, the appeal filed before the first respondent was rejected by the impugned order.

5. The seventh respondent filed a counter affidavit on behalf of the eight respondent also, wherein, he claimed that he purchased the entire property from the ninth respondent and his legal heirs on 04.07.2002, as the other legal heirs of the original owner Rasappa Gounder have given up their right in the property. He claimed that he had also obtained patta and is in possession and enjoyment of the property from the date of purchase. He settled the said property in favour of his wife - the eighth respondent on 17.12.2012 and got the patta transferred in her name. However, without their knowledge, a joint patta was obtained by respondents 3 to 6, which is not valid. Hence, he sought for dismissal of this writ petition.

6. Heard the learned counsels on either side and perused the materials placed before this Court.

7. The facts are not in dispute. The subject land is the self-acquired property of one Rasappa Gounder. Respondents 3 to 6 and 9 are his legal heirs, upon whom the property devolved upon equally. However, the ninth respondent, who had 1/5th share in the property, had chosen to sell the entire extent of the land in favour of the seventh respondent on 04.07.2002, who in turn, settled the same in favour of the eighth respondent on 17.12.2012. Admittedly, the other legal heirs, i.e., respondents 3 to 6, are not parties to the said sale deed dated 04.07.2002 executed in favour of the seventh respondent, while they have 4/5th share in the property. Hence, they sold their share to the petitioner, which cannot be found fault with.

8. Merely because one of the owners sold the entire property, including the shares of his mother and sisters, upon which he has no right, that will not take away the rights inherited by the other legal heirs. As the sale by the son, including the shares of the other legal heirs, in so far as the other heirs are concerned, is not binding on them and it is avoided by them. Therefore, the present sale deed executed by the mother and the daughters, namely, respondents 3 to 6, in favour of the petitioner of their share is valid and the same is liable to be registered.

9. Rule 55 of the Registration Rules speaks of the duty of the registering authority and the scope of the enquiry by the Enquiry Officer before registration. 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 objections 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."

10. Further, the power of the registering authority to pass orders refusing registration and circumstances under which such registration can be refused are provided under Rule 162 of the Registration Rules. It is not the claim of the official respondents that the respondents 3 to 6 are estopped from executing the present sale deed under one of the circumstances enumerated in the said provisions. The first respondent passed a cryptic order confirming the rejection made by the second respondent on the sole reason that the entire extent of the same property was sold by one of the legal heirs.

11. Learned counsel for respondents 7 and 8 relied on a Circular issued by the Inspector General of Registration dated 08.11.2013 in No.18223/C1/2013-3 to drive home the point that the registering authority shall insist the production of the encumbrance certificate of 10 days old with respect to the property and verify as to whether the property is being sold by the purchaser in the previous deed of conveyance and if the property is sold by a different person than the one mentioned in the previous sale deed, then after arriving at the subjective satisfaction of the ownership of the seller only, the document of conveyance should be registered.

12. This Court is of the view that the said Circular has to be revisited by the Inspector General of Registration, Chennai, for the simple reason that the person, who has no absolute right over the property, but sold the entire extent of the property without even the knowledge of the other sharers, should not be permitted to take away the right of the other sharers. But by virtue of the Circular, such kind of fraudulent sales should not be permitted to continue.

13. For the foregoing reasons, this writ petition is allowed and the impugned order of the first respondent dated 27.10.2015 is set aside. As a corollary, the second respondent is directed to register the sale deed dated 27.10.2015, if it is otherwise in order. It is open to the parties to workout their appropriate civil remedies before the appropriate civil forum. There will be no order as to costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The District Registrar,
Tiruppur Registration District,
Tiruppur.

2. The Sub Registrar,
Kunnathur,
Avanashi Taluk,
Tiruppur District.

+1 CC to Mr.PArthasarathy, Advocate sr 30573.

+1 CC to Mr.KAithamalai Kumaran, Advocate sr 30359.

+1 CC to Govt. Pleader sr 31104.

W.P.No.2230 of 2016

SP(06/05/2019)

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