

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.12.2019
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.11131 of 2017
and
W.M.P.No.12067 of 2017

M.Meena

.. Petitioner

-vs-

1.The District Registrar,
Registration Department,
Tindivanam.

2.The Joint Sub Registrar No.2,
Tindivanam.

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in his proceedings in Na.Ka.No.9/2016 dated 15.09.2016 and thereby quash the same and also thereby direct the respondents to implement the orders passed by this Court in W.P.No.5844/2016 dated 14.03.2016 and W.P.No.22619/2016 dated 30.06.2016 and thereby direct the 2nd respondent to receive and register the sale deed dated 12.05.2016 presented by the petitioner.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.P.P.Purushothaman,
Government Advocate

ORDER

Heard Mr.N.Suresh, learned counsel for the petitioner and Mr.P.P.Purushothaman, learned Government Advocate appearing for the respondents.

2.With consent on either side, this writ petition is taken up for final disposal.

3.The petitioner has filed this writ petition to quash the proceedings of the 2nd respondent dated 15.09.2016, and to direct the respondent to register the document presented by him for registration by implementing the direction issued in the earlier writ petitions.

4.It may not be necessary for this Court to dwell deep into the factual matrix and it would suffice to note that the petitioner is aggrieved by non registration of a document executed by her in respect of a property which is stated to have been secured pursuant to a decree passed in O.S.No.503 of 2007, dated 03.02.2009 on the file of Principal District Munsif, Tindivanam.

5.Mr.N.Suresh, learned counsel for the petitioner submitted that final decree proceedings were initiated in I.A.No.827 of 2010 in O.S.No.503 of 2007 and final decree has been passed on 13.12.2012, and delivery receipt has been issued on 28.01.2015, and patta transfer has been effected in favour of the petitioner in respect of the property in question. Yet the petitioner is unable to sell the property and register the sale deed and this is the 4th writ petition filed by the petitioner for such purpose. The 2nd respondent has refused registration on the ground that in the encumbrance certificate, two earlier sale transactions are reflected, viz., Document No.1614/2006 in favour of one T.Seenuvasan, and Document No.1557/2013 in favour of one M.Nithya Sundar.

6.The explanation given by the learned counsel for the petitioner is that the document bearing Registration No.1614/2006 does not concern the property of the petitioner which she secured through the decree of the Civil Court. To demonstrate the same, the learned counsel for the petitioner referred to the boundaries of the property and pointed out that those are all properties of one Ramu, brother of Govindan (grandfather of the petitioner) and the petitioner herein is not concern with the property.

7.So far as the other encumbrance viz., 1557/2013 is concerned, it is a sale deed executed by one Ganesh Babu in favour of M.Nithya Sundar and Ganesh Babu got the property by a sale deed dated 08.07.2011 registered as Document No.1543/2011 executed by the petitioner's father Murthy and legal heirs of Ramu, viz., Elumalai, Jothi, Anbazhagan and Sivasankari. This document viz., 1543/2011 according to the petitioner, is a fraudulent transaction meant to defeat the rights of the petitioner in the partition suit and executed at the time of pendency of the final decree proceedings and the said document is not binding on the terms and conditions of the Transfer of Property Act, 1882. Therefore, the learned counsel for the petitioner submits that the document presented by her should be registered.

8.The learned Government Advocate sought to sustain the impugned proceedings by referring to the counter affidavit in which the facts set out in the impugned proceedings have been

referred to. Admittedly, as against the impugned proceedings, appeal lies to the 1st respondent, viz., the District Registrar. The remedy of appeal under Section 72 of the Registration Act, 1908 is maintainable. This remedy is definitely an efficacious remedy which the petitioner has to avail because it would require summoning of parties by the District Registrar to enable the District Registrar to conduct an enquiry and take a final decision. In this writ petition, the petitioner has not impleaded the persons who were the executance of those documents viz., Murthy, Elumalai, Jothi, Anbalagan, Sivasankari, Ganesh Babu and the claimants T.Seenuvasan and M.Nithya Sundar. Therefore, those parties are required to be heard before a decision is taken on the appeal petition.

9. In the light of the above, this writ petition is disposed of by directing the petitioner to file an appeal before the 1st respondent against the impugned order and if such an appeal is filed within thirty days from the date of receipt of a copy of this order, the 1st respondent is directed to entertain the appeal without dismissing the same on the ground of limitation. In the appeal petition, the petitioner shall implead all the above mentioned persons as respondents and before deciding the appeal, the 1st respondent shall issue notice to all the parties and take note of the stand taken by them and the documents that they may produce and take a decision on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

abr

To

1.The District Registrar,
Registration Department,
Tindivanam.

2.The Joint Sub Registrar No.2,
Tindivanam.

+lcc to Mr.N.Suresh , Advocate SR.No. 100660

W.P.No.11131 of 2017

A.SK(03/02/2020)