

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

WP.No.15318 of 2017

M/Kumaresan

...Petitioner

Vs.

1. The Sub Registrar
Vikravandi
Villupuram District - 605 652.

2. The Tahsildar
Villupuram Taluk.

...Respondents

* R2 suo motu impleaded as per order dated 30.07.2018

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records and the order of the respondent dated 28.04.2017 and quashing the same as illegal and directing the respondent to register the sale deed dated 28.04.2017 executed in petitioner's favour without insisting him to clear the alleged encumbrance, if it is otherwise in order.

For Petitioner :
For Respondent :

Mr.G.Sankaran
Mr.P.P.Purushotham
Government Advocate for R1
Mr.I.Sathish
Additional Government Pleader
for R2

ORDER

The petitioner is aggrieved against the order of the first respondent dated 28.04.2017 in rejecting to register the sale deed presented by the petitioner on the reason that the subject matter property of the sale deed is claimed to be a Mayana Poromboke and that a Civil Suit in O.S.No.99 of 2011 on the file of the Principal District Court, Villupuram in respect of the subject matter property is pending.

2. The case of the petitioner is as follows:

The property measuring an extent of 20 cents out of 70 cents in S.No.201/6, Avadayarpattu Village, Vikravandi Taluk, Villupuram District and an extent of 35 cents in S.No.18, Vazhuthareddy Village, Villupuram Taluk, absolutely belonged to one N.Uma Maheswari and N.Karthik. The petitioner purchased the said property from those persons on 28.04.2017 by execution of a sale deed. The said sale deed was presented before the first respondent for registering on the same day. However, the first respondent refused to register the sale deed on the reason as stated supra. The subject matter property is

not a Mayana Poromboke, as claimed by the respondents herein and on the other hand, it is a private patta land originally belonged to one Ananthanarayanan. After death of the said Ananthanarayanan, his legal heirs viz., the vendors of the petitioner become absolute owners and consequently, they executed the said sale deed in favour of the petitioner. Therefore, the first respondent is not justified in refusing to register the sale deed. The said Ananthanarayanan, in fact, filed O.S.No.367 of 2008 on the file of the Additional District Munsif Court, Villupuram seeking for a decree of declaration to declare the patta granted by the Tahsildar, Villupuram to him is valid and genuine; directing the defendant therein to make necessary correction in the Revenue records by including the name of the plaintiff therein as pattadar; and for permanent injunction restraining the defendant from in any way interfering with his peaceful possession and enjoyment of the property. The District Collector of Villupuram was arrayed as the defendant in the said suit. The trial Court passed an ex-parte decree on 22.10.2009 in favour of the plaintiff therein. An application filed to set aside the said ex-parte decree was rejected by the trial Court. No further appeal was filed against the said

judgement and decree of the trial Court. Therefore, the second respondent is not entitled to claim the subject matter property as Mayana Poromboke.

3. A counter affidavit is filed by the second respondent, wherein, it is stated as follows:

The said Ananthanarayanan presented a petition before the District Collector, requesting to carry out the village accounts in respect of the subject matter land in his favour. The District Collector has rejected the said request. The said Ananthanarayanan filed a suit before the Additional District Munsif Court, Villupuram in O.S.No.367 of 2008 as stated supra. The said suit file was maintained at the Collectorate, but, unfortunately, connected suit file was misplaced and mingled with some other files and therefore, no written statement was filed before the District Munsif Court, Villupuram. However, the trial Court passed the ex-parte decree on 22.10.2009. Pursuant to the decree, the plaintiff therein filed a petition before the Tahsildar, Villupuram, for making corrections in the Village Accounts. Accordingly, the Tahsildar, Villupuram after getting opinion

from the Government Pleader, issued orders for making corrections in the Village Accounts by proceedings dated 25.06.2010. Thus, at present, Survey No.18, measuring an extent of 0.14.0 hectare stands in the name of Ananthanarayanan in Patta No.2602 of Vazhudhareddi Village. The application filed to condone the delay to re-call the ex-parte decree was dismissed in I.A.No.1290 of 2011 in O.S.No.367 of 2008. Against the said dismissal order, no appeal was preferred by the Collector. Till date, no action has been taken to cancel the order dated 25.06.2010 passed by the Tahsildar. The learned Government Pleader has opined that as per the Judgement and available Revenue records, Uma Maheswari, W/o.Ananthanarayanan and Karthi, S/o.Ananthanarayanan are the lawful title owners of the property.

4. Mr.G.Sankaran, learned counsel for the petitioner after reiterating the contention raised in this writ petition has thus, submitted that the first respondent is not justified in refusing to register the sale deed.

5. The learned Additional Government Pleader appearing for the second respondent has reiterated the contentions raised in the counter affidavit.

6. It is seen that the petitioner purchased the subject matter property by way of sale deed dated 28.04.2017 from one N.Uma Maheswari and N.Karthik, the legal heirs of the said Ananthanarayanan. There is no dispute to the fact that the said Ananthanarayanan has filed a suit in O.S.No.367 of 2008 on the file of the District Munsif Court, Villupuram seeking for the relief as discussed supra and that the trial Court has granted an ex-parte decree in favour of the said person. It is also not in dispute that the said decree has become final and conclusive and thus, binding on the parties, since the District Collector, Villupuram was arrayed as a defendant therein. When the said decree has become final and conclusive, the second respondent herein is not entitled to claim that the property is Mayana Poromboke and therefore, the sale deed executed by the legal heirs of the said Ananthanarayanan to the petitioner cannot be registered. On the other hand, as it is an

admitted fact that the said decree has become final and conclusive and in view of the decree obtained by the said Ananthanarayanan and the consequential order passed by the Tahsildar, Villupuram dated 25.06.2010 mutating the Revenue records in the name of Ananthanarayanan and in view of the fact that the said order of the Tahsildar, has not been cancelled or challenged, this Court is of the view that there is no impediment for the first respondent to register the sale deed, as the main objection raised by the second respondent on the nature of the property, cannot be sustained any more. Further, it is seen that the first respondent has referred to pendency of the suit before the District Court in O.S.No.99 of 2011 in respect of the subject matter property. But a perusal of the materials placed before this Court would show that the said suit in O.S.No.99 of 2011 is nothing to do with the present subject matter or the parties to the proceedings and on the other hand, it was a suit between some third parties with different relief. The learned Additional Government Pleader has also submitted that the number of the suit was wrongly quoted in the impugned order.

K.RAVICHANDRABAABU,J.

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7. Considering the above stated facts and circumstances, this writ petition is allowed and the impugned order is set aside. The first respondent is directed to register the sale deed 28.04.2017 presented by the petitioner, if there is no other legal impediment for him to do so. No costs.

30.01.2019

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

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To

1. The Sub Registrar
Vikravandi
Villupuram District - 605 652.

2. The Tahsildar
Villupuram Taluk.

W.P.No.15318 of 2017