

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.33601 OF 2019

Mrs.Venkatamma

...Petitioner

Vs

1.The Sub-Registrar, Hosur,
Krishnagiri District.

2.Mr.M.Chandrappa

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent issued vide Refusal Check Slip in No.RFL/Hozur/5/2019 dated 15.11.2019, quash the same and consequently direct the 1st respondent to register the gift deed dated 17.10.2019 presented by the petitioner in favour of the petitioner's grand daughter Mrs.Venkatamma, wife of Mr.Govindappa without insisting upon to cancel the sale Agreement dated 18.12.2006 registered as Doc.No.17439 of 2006 and return the registered gift deed to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.R.Bharathkumar

For Respondent-1 : Mr.T.M.Pappiah, SGP

ORDER

Mr.T.M.Pappiah, learned Special Government Pleader accepts notice for the first respondent. Heard both.

2. The petitioner challenges a check slip issued by the first respondent refusing to register a settlement deed on the ground that the subject property had been agreed to be sold in favour of the second respondent by an agreement of sale, registered as Doc.No.17439 of 2006.

3. As per the Rules prevalent as of now, unless and until the registered agreement of sale is canceled in a manner known to law, the first respondent cannot be compelled to register the settlement deed.

4. Mr.R.Bharathkumar, learned counsel for the petitioner submits that the agreement of sale is of the year 2006, that as of now, the second respondent cannot stake a claim that the subject property should be sold to him, that in fact, the agreement of sale worked itself out, that the time limit stipulated therein had already come to an end, that the second respondent had not expressed his readiness and willingness to perform the contract and that therefore, the agreement of sale is unenforceable.

5. The learned counsel for the petitioner is right in his legal submission. The unenforceability of the agreement cannot be decided by the first respondent. Given the present circumstances, the only remedy for the petitioner is to seek for a declaratory relief by filing a suit before the competent Civil Court stating that the registered agreement of sale is a nullity and is unenforceable and that therefore, it should be set aside.

6. The learned counsel for the petitioner submits that if the petitioner files a civil suit, there is every likelihood that the plaint would be refused to be accepted on the ground of limitation.

7. In my considered view, there cannot be any difficulty to present a plaint to declare the agreement of sale as unenforceable because the cause of action for doing so has arisen only now when the petitioner executed a gift deed in favour of her granddaughter.

8. Therefore, the writ petition is disposed of by granting liberty to the petitioner to approach the competent Civil Court to declare the agreement of sale as null and void and unenforceable. If such a plaint is presented, the competent Civil Court is directed to entertain the suit and take a decision on merits and in accordance with law. In the event of the petitioner being successful before the competent Civil Court, it will be open to the petitioner to approach the first respondent with a copy of the judgment and decree to get the gift deed registered. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

The Sub-Registrar, Hosur, Krishnagiri District.

+lcc to Mr.R.Bharathkumar , Advocate SR.No. 101084

+1 cc to Government Pleader Sr.No. 101170

WP.No.33601 of 2019

A.SK(20/12/2019)