



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.16451 of 2019

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1.M.Amirtham

2.Muniyasamy

3.Nagavalli Muthusamy

4.Kaaturani

5.Panchavarnam

6.Balamurugan

... Petitioners

Vs.

1.The District Collector,
Sivagangai District
Maruthupandiar Nagar,
Sivagangai.

2.The Deputy Inspector General of Registration of Tamil Nadu
Southern Region,
Othakadai
Madurai Taluk and District.

3.The District Registrar of Registration,
Sivagangai District,
Thirupathur Road,
Sivagangai.

4.The Sub Registrar,
Sub Registrar Office,
Melakkarai
Manamadurai Town,
Manamadurai,
Sivagangai District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents particularly the 4th respondent to cancel the fake power of attorney dated 05.08.2004 and the fake sale deed dated 20.08.2004 on the file of the Sub Registrar, Manamadurai, and to remove the encumbrance with regard to those offending documents from the register of encumbrance within the time to be fixed by this Court.



For Petitioners : Mr.P.Senthurpandian
For Respondents : Mr.M.Murugan
Government Advocate

ORDER

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The prayer in the Writ Petition is for a Writ of Mandamus to direct the respondents, particularly, the 4th respondent to cancel the fake power of attorney, dated 05.08.2004 and the fake sale deed dated 20.08.2004 on the file of the Sub Registrar, Manamadurai, and to remove the encumbrance with regard to those offending documents from the register of encumbrance.

2.Heard the learned counsel for the petitioners and the learned Government Advocate for the respondents.

3. In order to cancel the power of attorney, dated 05.08.2004 and the sale deed dated 28.02.2004 on the file of the Sub Registrar, Manamadurai and to remove the encumbrance, though the petitioners have filed this writ petition, the learned Government Advocate for the respondents, on instructions, would submit that, in order to declare the power of attorney in question as null and void, though the first petitioner's husband already approached the civil Court and obtained a decree in his favour in O.S.No.101/2015 by decree dated 10.01.2017 on the file of the Principal District Munsif, Manamadurai, the copy of the decree has not been submitted to the respondent office/concerned Registrar Office for recording the same under Section 23 of the Registration Act (hereinafter referred to as 'the Act').

4. If once the said decree copy is produced with the request to register the same, necessary steps would be taken by the respondents/registrar's office to register the same and if it is registered, where since there is a declaratory decree in favour of the petitioners declaring the power of attorney in question as null and void, the consequential effect would be that, the power of attorney in question would have no effect and by thus, the grievance of the petitioners would be redressed.

5. The learned Government Advocate also submitted that, however in respect of filing the decree copy for registration is concerned, even though there is a limitation under Section 23 of the Act, the same has been clarified by this Court in number of orders, as the said limitation is only directory and it is not mandatory and on that basis, the decree issued by the competent Court cannot be refused / rejected by the Registration department, hence a suitable direction to that effect by way of clarification can be given.

6. I have considered the said submissions made by the learned Government Advocate for the respondents.



7. In response to the same, the learned counsel for the petitioners would submit that, the decree copy dated 10.01.2017 in O.S.No.101/2015 referred to above, would immediately be placed before the respondent registration office with a request to register the same and on receipt of the same, let the Registrar do the needful within the time frame to be stipulated by this Court.

8. Considering the said submissions made by both sides and having regard to the factual matrix of the case, this Court is inclined to pass the following directions:

"(1) The petitioners shall produce the decree copy in O.S.No.101/2015 dated 10.01.2017 on the file of the District Munsif Court, to the fourth respondent office immediately and on receipt of the copy of the decree with a request from the petitioners, the same shall be registered by the fourth respondent without raising the issue of delay within the meaning of Section 23 of the Act, as the issue has already been decided by this Court and accordingly, register the same within a period of two weeks thereafter ;

(2) After registering the same, necessary endorsement or mutation shall be recorded in the concerned records available in the Registrar's office and thereafter, if any application is made by the petitioners to get an encumbrance certificate, the same shall be issued to the petitioners on the payment of cost, where mutation or change going to be taken place, pursuant to the orders, as indicated above, shall be reflected.

9. With the aforesaid observations and directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CO)

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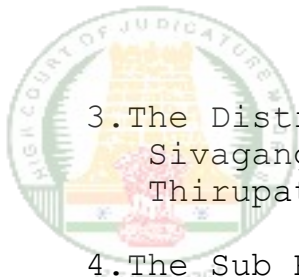
Sub Assistant Registrar(CS)

RR

To

1.The District Collector,
Sivagangai District
Maruthupandiar Nagar, Sivagangai.

2.The Deputy Inspector General of Registration of Tamil Nadu
Southern Region,
Othakadai
Madurai Taluk and District.



3.The District Registrar of Registration,
Sivagangai District,
Thirupathur Road, Sivagangai.

4.The Sub Registrar,
Sub Registrar Office,
Melakkarai
Manamadurai Town,
Manamadurai,
Sivagangai District.

+1 CC to SPL GP (SR-79479[F] dated 02/08/2019)

W.P. (MD) No.16451 of 2019

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MK (20.12.2019) 4P 6C