



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2019

CORAM:

THE HONOURABLE **MR. JUSTICE M. SUNDAR**

W.P (MD) No.18929 of 2018

WEB COPY

Kawsalya

: Petitioner

Vs.

1.The District Registrar,
Tirunelveli District, Tirunelveli.

2.The Sub Registrar,
Sub Registrar Office,
Thisayanvilai, Tirunelveli District.

3.Fathima Mary

4.Devairakkam

: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, Writ of mandamus, to direct the second respondent to cancel the settlement deed registered in Document No.1921/2015, dated 24.06.2015 on the file of the second respondent and remove the encumbrance in S.Nos.319/22, 630/31, 319/19, 309/33, 637/3, 311/13 and 630/41, situated at Karaisuthupudur Village, Radhapuram Taluk, Tirunelveli District, by considering the representation dated 30.06.2017.

For Petitioner : Mr.T.Leninkumar

For R1 and R2 : Mr.M.Murugan,
Government Advocate.

For R3 and R4 : No Appearance

ORDER

Mr.T.Lenin Kumar, learned counsel on record for writ petitioner and Mr.M.Murugan, learned Government Advocate on behalf of the respondents 1 and 2 (Official respondents) are before this Court.

2. To be noted, respondents 3 and 4 are private respondents and this Court is informed that respondents 3 and 4 are mother and brother respectively of the writ petitioner.

3. Case file placed before this Court reveals that Court notice sent to the third respondent has been returned with the endorsement 'addressee left'; with regard to the fourth



respondent, he has been duly served on 14.09.2018 qua Court notice and name of the fourth respondent is shown in the cause list.

4. This Court is informed that no counsel has entered appearance on behalf of the fourth respondent. Name of the fourth respondent called out aloud thrice in Court and in the adjoining corridors, but, no representation for the respondents. In this backdrop, with consent of learned counsel for the writ petitioner and State counsel on behalf of respondents 1 and 2, the main writ petition is taken up, heard out and is being disposed of.

5. Be that as it may, it is made clear that this order will not adversely affect the rights of private respondents 3 and 4 and adequate safeguards/safety valves are being put in place in this order, qua the rights if any of respondents 3 and 4.

6. Considering the nature of the submission made at the Bar, short facts shorn of as elaboration will suffice. Notwithstanding very many averments made in the affidavit filed in support of the writ petition, notwithstanding several contentions canvassed/grounds urged in the affidavit filed in support of the writ petition, learned counsel for writ petitioner focused his submissions in the hearing on one pivotal point. That one pivotal point is that the nucleus of instant writ petition is immovable properties comprised in seven different survey numbers (i) அ.பு.சர்வே 319/22 ஷேக் 0.05.0, (ii) அ.பு.சர்வே 630/31 ஷேக் 0.00.5 (iii) அ.பு.சர்வே 319/19 ஷேக் 0.05.0 (vi) அ.பு.சர்வே 309/33 ஷேக் 0.06.0 (v) அ.பு.சர்வே 637/3 ஷேக் 0.01.0 ஆக ஷேக் 0.17.5க்கு சேண்டு 43ம் பூரா. (vi) அ.பு.சர்வே 311/13 ஷேக் 0.09.0 (vii) அ.பு.சர்வே 630/41 ஷேக் 0.15.50 ஆக ஷேக் 0.24.5க்கு சேண்டு 61ம் பூரா in Karaisuthupudur Village, Radhapuram Taluk, Thisayanvilai Sub Division situated in Palayamkottai Registration District, (herein after 'said property' for the sake of brevity convenience); that the third respondent executed a registered sale deed dated 26.05.2015, registered as document No.1652/2015, on the file of the second respondent (Jurisdictional Sub Registrar), conveying said property to the writ petitioner for a valuable consideration; that thereafter, with the intention of neutralizing the sale made for valuable consideration, the third respondent executed a settlement deed dated 24.06.2015 in favour of fourth respondent and this settlement deed has also been registered on the file of the second respondent as document No.1921/2015; that the execution of the settlement deed by the third respondent for the same property i.e., said property conveyed by way of sale deed in favour of the writ petitioner is clearly fraudulent; that the writ petitioner, on coming to know about the same, sent a representation dated 30.06.2017 to respondents 1 and 2, but, there is inaction on the part of the respondents 1 and 2 necessitating the filing of the instant writ petition.



7. Learned counsel for writ petitioner in the aforesaid factual background submitted that the execution of the settlement deed dated 24.06.2015 by the third respondent in favour of the fourth respondent is clearly fraudulent. Furthering his submissions, in this direction, learned counsel submitted that before registering the settlement deed, second respondent ought to have verified the predecessor title deeds and if that exercise had been carried out, execution of sale deed for the same property in favour of the third respondent would have come to light and the second respondent having not embarked upon such an exercise, has resulted in infraction of rights of the writ petitioner.

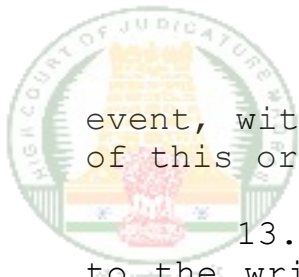
8. Responding to the aforesaid submissions of the learned counsel for the writ petitioner, State counsel, drawing the attention of this Court to Section 68(2) of the 'Registration Act 1908' (herein after referred to as 'said Act'), submitted that the Registrar does have powers qua such complaints to make an enquiry. It is also submitted that a circular has been issued being circular dated 31.07.2018, bearing reference No.41530/g1/2017, wherein guidelines have been given and parameters have been laid down for conducting enquiry into matters of this nature, where there is allegation of fraudulent transfer.

9. It is in this context, a representation has been made by the writ petitioner being representation dated 30.06.2017 to respondents 1 and 2, which has been alluded to supra.

10. Considering the narrow compass, on which the instant writ petition now turns, this Court is left with the considered view that it would be appropriate to direct the first respondent/Jurisdictional District Registrar concerned to consider the representation of the writ petitioner dated 30.06.2017 as a complaint of fraudulent transfer and conduct an enquiry in accordance with aforesaid circular and return findings on the same.

11. Though obvious, it is made clear that while embarking upon this exercise of conducting enquiry, the first respondent Jurisdictional District Registrar, as the case may be, shall ensure that respondents 3 and 4 or any other person/entity, which is likely to be affected by this enquiry, shall be put on notice and reasonable opportunity shall be given to such person/entity before a finding is returned.

12. The aforesaid exercise qua representation dated 30.06.2017 given by the writ petitioner shall be commenced, carried out and concluded as expeditiously as possible and in any



event, within twelve (12) weeks from the date of receipt of a copy of this order.

13. The outcome of the enquiry shall be duly communicated to the writ petitioner as well as to all other parties concerned under due acknowledgment within a fortnight from the date of conclusion of enquiry.

14. Instant writ petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The District Registrar,
Tirunelveli District, Tirunelveli.

2.The Sub Registrar,
Sub Registrar Office,
Thisayanvilai, Tirunelveli District.

+1 CC to M/s.GP (SR-86296[F] dated 12/09/2019)

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-86436[F] dated
13/09/2019)

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