

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

W.P.No.16043 of 2020

and

WMP No.19971 of 2020

R.Ravi

...Petitioner

Vs.

- 1 The District Registrar
District Registrar Office
Kallakuruchi Taluk
Villupuram District.
- 2 The Deputy Registrar
Door No. 50, Sankara Naidu Street
Thirupathiripuliyur
Kadalar- 607 002.
- 3 The Sub- Registrar
Sub Registrar Office
Chinnasalem Town and Taluk.

...Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to cancel the sale deeds dated 30.06.1993 bearing Document Nos.1138 and 1139 of 1993 before the Sub-Registrar, Chinnasalem and delete the corresponding entries by considering the Petitioner's representation dated 17.02.2020.

For Petitioner : Mr.P.Valliappan

For Respondents: Mr.T.M.Pappiah
Special Government Pleader

ORDER

On consent given by either side, main Writ Petition itself is taken up for final hearing.

2. This Writ Petition has been filed for the issue of a Writ of Mandamus directing the respondents to cancel the sale deeds dated 30.06.1993, which was registered on the file of the third respondent and consequently, to delete the entries made in the Encumbrance Certificate, pertaining to Document Nos.1138 and 1139 of 1993.

3. The case of the petitioner is that the subject property is an ancestral property and originally the patta stood in the name of petitioner's father, who died on 16.10.2020 and the property devolved on the petitioner and his brother. The further case of the petitioner is that some other persons, who did not have any right or title over the property, started interfering with the possession and enjoyment of the property and two sale deeds came to be executed on 30.06.1993 and it was also registered before the third respondent as Document Nos.1138 and 1139 of 1993. A suit therefore came to be filed.

4. The suit was contested on merits and ultimately, the suit was decreed on 31.03.2005 declaring the title of the petitioner and his brother over the subject property. According to the petitioner, this judgment and decree passed in the suit has become final.

5. The petitioner further states that after the decree was passed by the Civil Court, the defendants in the suit realised that the earlier sale deeds that were executed on 30.06.1993 was legally not valid and hence, requested the petitioner and his brother to execute fresh sale deeds. The petitioner and his brother executed two sale deeds on 17.03.2006 and the same was registered before the third respondent in Document Nos.623 and 624 of 2006. What was sold by virtue of these sale deeds was an extent of 1 acre, out of 1 hectare and 83.76 ares.

6. The grievance of the petitioner is that when he approached the bank to obtain loan by mortgaging the remaining property, the banks are refusing to grant loan by pointing out to the earlier two sale deeds, which were registered on 30.06.1993. Any amount of persuasion is not in any way satisfying the requirements of the banks and hence, the petitioner made a representation to the respondents to cancel the entries of Document Nos.1138 and 1139 of 1993. Since the same was not considered, the present Writ Petition has been filed before this Court.

7. Heard Mr.P.Valliappan, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the respondents.

8. The present scheme of the Registration Act and the various circulars issued under the Act do not provide for a mechanism to cancel the entries made in the Encumbrance Certificate. This Court has repeatedly held that the Registering Authority has not been conferred with the power of cancelling documents and it is a power, which is exclusively vested with the Civil Courts. If the Registering Authority is conferred with the power of cancelling the entries, in a way, that will also tantamount to cancelling the document. Therefore, no useful purpose will be served in directing the

respondents to consider the representation made by the petitioner, wherein the petitioner has sought for the cancellation of the entries made while registering the Document Nos.1138 and 1139 of 1993.

9. In the considered view of this Court, the competent Civil Court namely, the III Additional District Munsif Court at Kallakurichi has already declared the title over the subject property and it was held that the petitioner and his brother are the owners of the property with absolute title. This judgment and decree was delivered on 31.03.2005. This decree virtually makes the earlier two sale deeds executed on 30.06.1993 and registered as Document Nos.1138 and 1139 of 1993, non-est in the eye of law. This is further confirmed by the fact that the same was specifically mentioned in the subsequent sale deeds that were executed by the petitioner and his brother in favour of the defendants through Document Nos.623 and 624 of 2006. In short, the sale deeds dated 30.06.1993 registered as Document Nos.1138 and 1139 of 1993 do not exist in the eye of law.

10. Unfortunately, the Financial Institutions and Banks do not seem to understand this simple legal proposition. Therefore, the petitioner is finding it difficult to get loan by mortgaging the remaining property. This Court has to therefore necessarily find out a device to reverse the earlier entries made in Document Nos.1138 and 1139 of 1993. The most effective device would be to register the decree in O.S.No.261 of 2003. Once this decree is registered, the earlier entries made on 30.06.1993 will automatically get reversed. This will further be substantiated by the subsequent registration of the sale deeds dated 17.03.2006. This clarity will suffice and will enable the petitioner to seek for loan by mortgaging the remaining property.

11. In view of the above discussions, there shall be a direction to the petitioner to present the decree passed in O.S.No.261 of 2003 dated 31.03.2005 before the third respondent. The third respondent shall register this decree, if it is otherwise in order, subject to the petitioner paying the necessary stamp duty and registration fees. Immediately on such registration, the earlier entries made while registering Document Nos.1138 and 1139 of 1993 will automatically get reversed.

12. This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

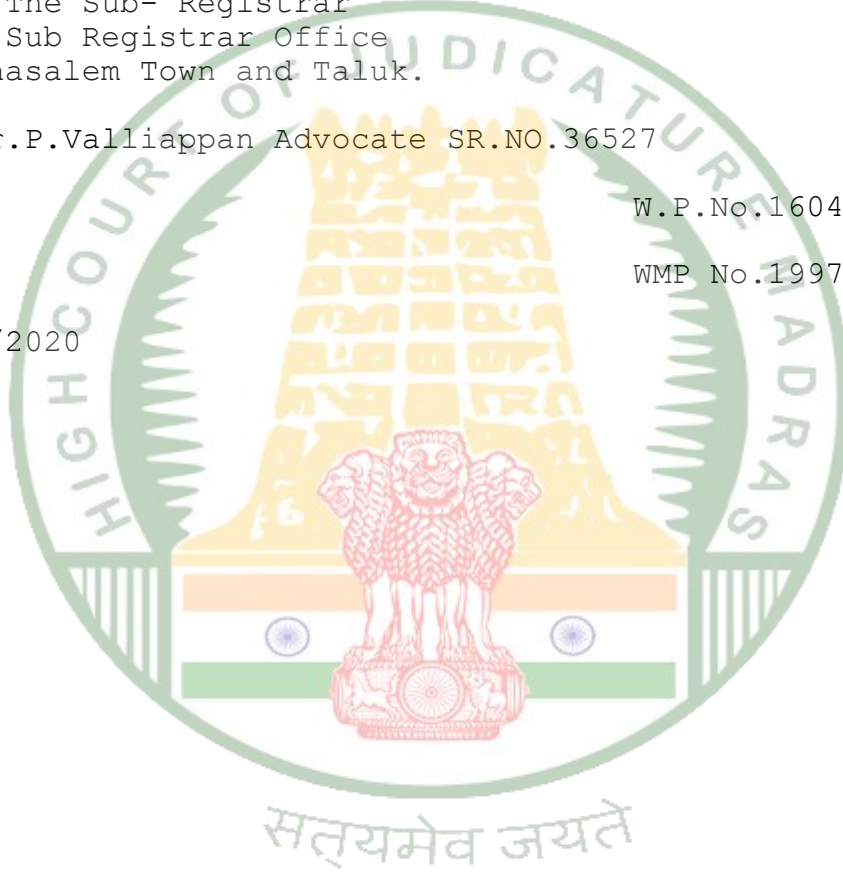
To

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+1cc to Mr.P.Valliappan Advocate SR.NO.36527

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