

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

WP.No.11323 of 2020

and

WMP No.13806 of 2020

M.Singaram

.. Petitioner

- Vs -

1. The Inspector General of Registration
O/o. Inspector General of Registration,
Santhome, Mylapore,
Chennai - 600028.
2. The District Registrar (Administration)
O/o. The District Registrar,
Cuddalore-2.
3. The Sub-Registrar,
O/o. the Sub-Registrar,
Kurinjipady,
Cuddalore District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, forbearing the 3rd respondent from registering any documents in respect of the properties bearing survey Nos. 67/13, 90/3, 4, 5, 7, 13, 14, 92/2A, 2B, 3, 5, 6, 481/4, 4B3, 482/3, 4, 5, 6 situated at Vengadampatti village, Kurinjipadi sub registration, Cuddalore Registration district till the disposal of the original suit in O.S.No.30/2015 on the file of Principal District Judge, Cuddalore.

For Petitioner : Mr.C.Samivel

For Respondents : Mr.T.M.Pappiah

Special Government Pleader

O R D E R

This writ petition has been filed for the issue of writ of Mandamus forbearing the third respondent from registering any document that is presented with respect to the subject property till the disposal of the suit in OS.No.30 of 2015.

2. It is seen from the records that the wife of the petitioner had filed a suit in OS.No.30 of 2015 before the learned Principal District Judge, Cuddalore sought for the relief of partition and other consequential reliefs and she had settled for 1/5th share in the property. The said suit is pending till date. The petitioner's wife died in the year 2020 leaving behind the petitioner and his son as the legal heirs. The petitioner states that steps are being taken to implead themselves in the suit.

3. The grievance of the petitioner is that the defendants in the suit are attempting to alienate the property and the third respondent is entertaining those documents. Therefore, the petitioner submitted an objection on 18.06.2020 to the third respondent and requested that no document must be entertained till the disposal of the suit. Since this objection was not considered, the present writ petition has been filed before this Court seeking for appropriate directions.

4. The learned counsel for the petitioner submitted that the first respondent had issued a circular dated 04.10.2018, wherein all the Sub Registrars have been instructed to deal with any objection/petition received by them and take a decision before registering the documents. The learned counsel submitted that the third respondent is bound by the said circular and therefore, the objection given by the petitioner must be taken into consideration before the third respondent entertains any document for registration. The learned counsel also brought to the notice of this Court the letter of the second respondent dated 31.07.2020 that was sent to the third respondent wherein, the third respondent was directed to act upon the objections submitted by the petitioner.

5. Mr.Pappiah, learned Special Government Pleader appearing on behalf of the respondents submitted that the objection/petition given by the petitioner cannot be considered in view of the pending suit in OS.No.30 of 2015. The learned counsel further submitted that the petitioner has to file an appropriate application before the concerned Civil Court and seek for an order of interim injunction and if any such injunction is granted, the third respondent will not thereafter entertain any document. Till the same is not done by the

petitioner, the petitioner cannot be indirectly allowed to prevent the third respondent from performing his statutory duties.

6. This Court has carefully considered the submissions made on either side and the materials available on records.

7. The petitioner is apprehending that the defendants in the suit are attempting to alienate the property and the specific allegations are made against the 8th defendant in the suit, who is said to have divided the property and obtained approval from the authority and is now trying to sell the property to third party by presenting documents before the third respondent. After having made specific allegations against the 8th defendant in the suit, the petitioner had not chosen to make her as a party in the suit. Therefore, this writ petition must be dismissed on the ground of non-joinder of necessary party.

8. Even otherwise, while pending the suit in OS.No.130 of 2015, if the petitioner apprehends that the property will be alienated, an appropriate application must be filed before the concerned Court seeking for an injunction to prevent any further alienation. Instead of seeking for such relief, the petitioner cannot approach this Court by way of filing the present writ petition and the jurisdiction under Article 226 of the Constitution of India cannot be used for stop gap arrangements. A writ petition can never be used for getting an interim order when the substantial right of the parties is pending before the competent civil court. Useful reference can be made to judgment of the Hon'ble Supreme Court in the case of Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others reported in 2010 9 SCC 437. This judgment was subsequently followed by this Court in the case of A.J.K.Fernandez Vs. Secretary Finance, Reserve Bank of India and others reported in 2011 3 MLJ 523.

9. In view of the above, this Court does not find any merit even to entertain this writ petition and accordingly, this writ petition is dismissed. It is always left open to the petitioner to file an appropriate application before the Civil Court, in which the suit is pending and work out his remedy in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Inspector General of Registration
O/o. Inspector General of Registration,
Santhome, Mylapore, Chennai - 600028.
2. The District Registrar (Administration)
O/o. The District Registrar, Cuddalore-2.
3. The Sub-Registrar,
O/o. the Sub-Registrar, Kurinjipady, Cuddalore District.

+1 cc to The Government Pleader, Sr.No.28328

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PP (CO)
RMP (15/09/2020)



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