IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.11723 of 2020

R.Baskar ...Petitioner

Vs.

1 The Inspector General (I.G)
Registration Department of Tamil Nadu
Santhome, Chennai 600 004.

2 The District Register (D.R)
Registration Department of Tamil Nadu
Kanchipuram District
Kanchipuram

3 The Sub Register
Sub Registration Office
Uthiramerur
Kanchipuram District. ...Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st and 2nd respondents to consider the petitioner's representation dated 23.06.2020 within stipulated period and consequently direct the 3rd respondent to delete the unnecessary encumbrance entry reflected on the petitioner's absolute right over agriculture land property which is totally extent of 0.72.00 Hectare acres vide document No. 1438 / 2008 on his file.

For Petitioner : Mr.R.M.Gokulakrishnan
For Respondents: Mr. Mr.T.M.Pappiah
Special Government Pleader

ORDER

This Writ Petition has been filed for the issuance of a Writ of Mandamus directing the first and second respondents to consider the representation made by the petitioner on 23.06.2020 and consequently direct the third respondent to delete the entry made in the Encumbrance Certificate with regard to a sale deed registered on 14.03.2008 as Document No.1438 of 2008.

2. The case of the petitioner is that the sale deed was

executed in favour of his mother on 11.02.1985 and which was also registered as Document No.1096 of 1985. It is further stated that the very same property was made a subject matter of the sale agreement and based on this sale agreement one Narayanasamy filed a suit for specific performance and the suit was decreed in his favour and a sale deed was executed in his favour on 14.03.2008 by the Court and it was registered as Document No.1438 of 2008. The petitioner, after coming to know about the registration of such a document, made a representation to the first and second respondents on 23.06.2020 to direct the third respondent to delete the entry in the Encumbrance Certificate with regard to the sale deed registered on 14.03.2008. Since the same was not acted upon, the present Writ Petition has been filed before this Court seeking for appropriate direction.

3. The learned counsel for the petitioner submitted that the property which was already sold in favour of his mother cannot be dealt with by the vendor once again and subsequently, the sale deed executed in favour of one Narayanasamy will not bind the petitioner. Learned counsel further submitted that even though the sale deed was executed in favour of Narayanasamy on 14.03.2008 based on a decree passed in the year 1993 and confirmed in the Appeal by judgment and decree dated 15.02.2006, no steps have been taken to take possession of the property and the decree itself has become inexecutable. Therefore, the learned counsel submitted that the entry found in the Encumbrance Certificate has to be deleted.

4. Per contra, Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the respondents submitted that the respondents are not vested with the power of cancelling the entry in the Encumbrance Certificate. The learned Special Government Pleader submitted that the cancellation of entry in the Encumbrance Certificate will tantamount to cancelling the document itself and the Hon'ble Supreme Court has held that the Registrar does not have power to cancel the document. The learned counsel further submitted that if at all the petitioner is aggrieved by the document executed in favour of Narayanasamy on 14.03.2008, the petitioner must approach a Civil Court and challenge the same and work out his remedy in accordance with law.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The main grievance that has been expressed by the petitioner is that the owner of the property had executed a sale deed in favour of the mother of the petitioner on 11.02.1985. Thereafter, the vendor does not have any power to deal with the property. However, one Narayanasamy had filed a suit based on a

sale agreement dated 23.08.1983. The suit came to be filed in O.S.No.33 of 1987 before the Sub Court, Kancheepuam for specific performance. The suit was decreed on 15.10.1993. Aggrieved by the same, an Appeal was filed in A.S.No.18 of 1994. It is seen that the mother of the petitioner had also filed an Appeal in A.S.No.2 of 1994. Both the appeals were dismissed by judgment and decree dated 24.01.1995. As against the same, a Second Appeal was filed before this Court and that was also dismissed. Ultimately the decree was put into execution in E.P.No.39 of 2006. The decree was executed and the sale deed came to be executed in favour of Narayanasamy on 14.03.2008. It was executed by the Court, namely, District Munsif-cum-Judicial Magistrate, Uthiramerur. This document was registered as Document No.1438 of 2008.

7. The petitioner wants the entry made in the Encumbrance Certificate to be removed by the respondents on the ground that no steps were taken by Narayanasamy to take possession of the property till date and the decree itself has become inexecutable after a lapse of twelve years.

8. In the considered view of this Court, the claim made by the petitioner is totally unsustainable. The decree passed by the trial Court was in fact challenged by the mother of the petitioner and that Appeal also came to be dismissed. Thereafter, the decree was acted upon and a sale deed was executed in favour of Narayanasamy. Whether the said Narayanasamy can proceed to take possession of the property based on the sale deed is an issue into which, this Court does not want to venture into in exercise of its jurisdiction under Article 226 of the Constitution of India. At any rate, there is a valid sale deed executed in favour of Narayanasamy and there is also an entry found in the Encumbrance Certificate reflecting the registration of the said sale deed. This entry can never be deleted by the respondents. No useful purpose will be served in directing the respondents to consider the representation made by the petitioner, since the respondents, ultimately, do not have the power to delete the entry made in the Encumbrance Certificate. Such deletion of entry will tantamount to cancelling the very document itself and such powers are not vested with the respondents.

9. In the result, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mra

To

1 The Inspector General (I.G)
Registration Department of Tamil Nadu
Santhome, Chennai 600 004.

2 The District Register (D.R)
Registration Department of Tamil Nadu
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Kanchipuram

3 The Sub Register
Sub Registration Office
Uthiramerur
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+1 cc to The Government Pleader, Sr.No. 28991

W.P.No.11723 of 2020

MP(CO)
RMP(13/10/2020)