

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2020

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

WP No.12526 of 2020

K.Vishnu Kumar

..Petitioner

Vs.

1.The District Registrar,
Office of the District Registrar,
Uthukuli Main Road,
Tirupur.

2.The Sub Registrar,
Gomangalam, Coimbatore District.

..Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st respondent to instruct the 2nd respondent to cancel the entry made in the encumbrance certificate in respect of the sale deed executed by Palani Madari dated 12.03.1984 registered as Doc.No.185/1984 on the file of the 2nd respondent based on the representation of the petitioner dated 06.08.2020.

For Petitioner : Mr.N.Umapathi

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

ORDER

This writ petition has been filed for the issue of writ of Mandamus directing the respondents to cancel the entry made in the encumbrance certificate with respect to a Sale Deed that was executed on 12.03.1984 and which was registered as Document No.185 of 1984.

2. The case of the petitioner is that the subject property was originally assigned in favour of one Karuppa Madari. After his demise, his son seems to have dealt with this property and executed a Sale Deed on 13.03.1984 and this document has been registered as document No.185 of 1984.

3. The further case of the petitioner is that the same property was assigned in favour of one lakshmi by the proceedings of the Collector dated 11.12.2003. This property was settled by the said lakshmi in favour of her daughter R.V.Ratnam by a registered settlement deed dated 21.12.2017. The revenue records shows that the patta was also granted in favour of the said R.V.Ratnam in Patta No.816. The said R.V.Ratnam by a registered sale deed dated 21.12.2017 sold the subject property in favour of the petitioner and this was registered as document No.3306 of 2017 on the file of the 2nd respondent.

4. The grievance of the petitioner is that the original Sale deed that was executed in the year 1984 is non-est in the eye of law and it keeps reflecting in the encumbrance certificate and as a result of the same, the petitioner is not able to get any loan from financial institutions. The petitioner therefore made a representation to the respondents seeking to cancel the entry made in the encumbrance certificate. Since the same was not acted upon, the present writ petition has been filed before this Court, seeking for appropriate directions.

5. The learned counsel for the petitioner submitted that there must be some mechanism to cancel the entries made in the encumbrance certificate since such entries stands in the way of the real owner of the property from getting loans from financial institutions, since these entries are put against them and no loans are sanctioned. The learned counsel further submitted that the respondents ought to have acted upon the representation made by the petitioner and this Court has to direct the respondents to cancel the entry made in the encumbrance certificate pertaining to the transaction which took place in the year 1984.

6. Per contra, Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the respondents submitted that the respondent do not have any right to cancel the entries made in the encumbrance certificate. The learned Special Government pleader submitted that the respondent can only make entries in the encumbrance certificate based upon the registration of documents made before the concerned Sub Registrar Office. Once such entry is made in the encumbrance certificate, the entry cannot be cancelled unless the document itself is held to be invalid or non-est by a competent civil court and such a decree can be registered before the concerned Sub-Registrar office and this will be treated as a reversal of the earlier entry made in the encumbrance certificate. The learned counsel submitted that such cancellation of entries made in the encumbrance certificate will virtually amount to cancelling the very document itself and such a power is not vested with the respondents.

7. This Court has carefully considered the submissions made on either side and also perused the materials placed before it.

8. This Court is in complete agreement with the submissions made by the learned Special Government Pleader appearing on behalf of the respondents. The respondents are not vested with the right to cancel any entry made in the encumbrance certificate. If such rights are granted, it will virtually amount to cancelling the earlier documents registered before the concerned Sub-Registration Office. It will have very serious consequences and it is a right which is vested only to a competent Civil Court.

9. While agreeing with the submissions made by the learned Special Government Pleader, it also becomes important for this Court to find out some solution to the petitioner. The petitioner will not be able to go before a Civil Court to cancel the earlier Sale deed executed on 13.03.1984, since the petitioner is not a party to the said document. This Sale Deed became a cause of action for the Revenue Divisional Officer to cancel the very assignment patta granted in favour of the assignee, since the Sale deed was executed against the terms and conditions of the assignment patta. Such cancellation virtually makes the Sale Deed dated 13.03.1984 as non-est in the eyes of law. The same property has been subsequently assigned in the year 2003 and it was dealt with and presently, the petitioner is the owner of the property. The Sale Deed dated 13.03.1984 has absolutely no meaning and consequently, the entry found in the encumbrance certificate for registration of the said document as document No.185 of 1984 also has no meaning.

10. The only way to reverse the above entry is to register the present order passed in this writ petition and thereby the earlier entry made in the year 1984 automatically pales to insignificance. This order cannot be taken as a precedent in all the other cases and this order is passed by taking into consideration the peculiar facts and circumstances of this case. This is more so since the earlier sale deed dated 13.03.1984 is found to be non-est in the eyes of law.

11. In view of the above discussion, there be a direction to the petitioner to make a fresh representation to the 2nd respondent along with copy of this order. The 2nd respondent on receipt of the representation shall register the certified copy of this order and the same shall be reflected in the Encumbrance certificate. This will effectively reverse the earlier entry and the grievance of the petitioner will also be redressed.

12. This writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The District Registrar,
Office of the District Registrar,
Uthukuli Main Road,
Tirupur.

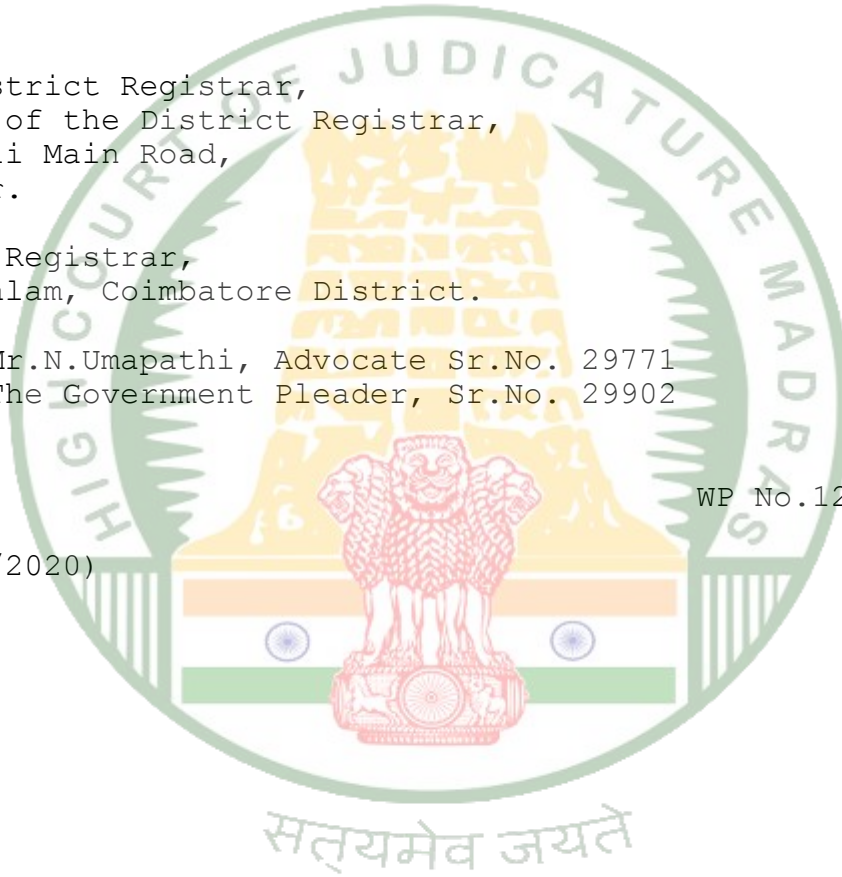
2.The Sub Registrar,
Gomangalam, Coimbatore District.

+1 cc to Mr.N.Umapathi, Advocate Sr.No. 29771

+1 cc to The Government Pleader, Sr.No. 29902

WP No.12526 of 2020

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



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