

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

WP No.12585 of 2020
and WMP No.15518 and 15521 of 2020

Vadamugam Vellode Nalukarai Nattu Goundergal Sangam,
Rep. By its President K.Chinnasamy,
S/o.Kulandhiyanna Gounder,
No.15, V.Kuttapalaya,
V.Vellodu (Post),
Perumdurai (Taluk),
Erode - 638 112 ..Petitioner

Vs.

1. The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai - 600 028.
2. The District Sub-Registrar,
Erode Sub-Registrar Office,
Rangampalayam,
Erode - 638 009.
3. The Sub Registrar,
SRO Office,
Avalpoondurai,
Kangayam Road,
Erode - 638 115
4. V.A.Ponnusamy ..Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent pertaining to the order passed in Na.Ka.No.19 of 2020 dated 21.02.2020 and quash the same and consequently, direct the 3rd respondent to register and release the sale deed dated 10.07.2020 in respect of the lands situate in Survey No.631/1A1B situate in Vadamugam Vellode Village, Perunduari Taluk, Avalpoondurai Sub R.D., Erode R.D.

For Petitioner : M/s.P.V.Law Associates
For Respondent : Mr.T.M.Pappiah,
Special Government Pleader
for R1 to R3.
Mr.K.Parameswaran,
Government Advocate for R4

ORDER

On the consent given by either side, the main writ petition itself is taken up for final hearing.

2. This writ petition has been filed challenging the impugned order of the 3rd respondent dated 21.02.2020 and for a consequential direction to the 3rd respondent to register and release the document submitted by the petitioner Sangam with respect to the subject property.

3. The case of the petitioner sangam is that they are the owners of the subject property and they purchased the property for the purpose of constructing a marriage hall. After the purchase of the property, the petitioner sangam wanted to alienate a portion of the property and a Sale deed was executed on 10.07.2020. When the same was presented before the 3rd respondent, the 3rd respondent had rejected the registration of the document based on the opinion given by the Government Advocate and the 3rd respondent insisted that the petitioner must get appropriate permission from the Civil Court in which O.S.No.48 of 2019 is pending. Aggrieved by the same, the present writ petition has been filed before this Court.

4. It is seen from records that the 5th respondent had earlier approached this Court and filed WP No.4190 of 2020. In the said writ petition, he had sought for a direction to the 3rd respondent to consider his representation and not to register any document pertaining to the properties which is a subject matter of dispute in O.S.No.48 of 2019. This writ petition was dismissed as withdrawn at the time of admission on 21.02.2020. Thereafter, the matter was posted under the caption for clarification on 27.07.2020. The following order was passed on that day:-

2. The Writ Petition was dismissed as withdrawn with liberty granted to the Petitioner to file an application in O.S. No. 48 of 2019 before the District Court, Erode, seeking restraint of alienation of the property in that suit without prior permission of that Court as required under Section 52 of the Transfer of Property Act, 1882, during its pendency. Learned Counsel for the

Petitioner states that Mr. M.Tamizharasan, Learned Additional Government Pleader, who had appeared for the First to Third Respondents during that hearing on 21.02.2020, had produced the letter no. Na.Ka. No. 19/2020 dated 21.02.2020 from the Sub-Registrar, Avalpoondurai informing that no document relating to the property in respect of the aforesaid suit would be registered without prior permission of that Court, though the said fact has not been recorded in the order passed by this Court. It is borne out from the record that such letter dated 21.02.2020 had been produced before this Court and the Learned Counsel for the Petitioner has been then furnished a copy of the same. The grievance is now sought to be ventilated by the Petitioner that despite the aforesaid letter produced before this Court, a document has presented for registration relating to that property.

3. Mr. T.M.Pappiah, Learned Special Government Pleader appearing for the First to Third Respondents, on instructions, states that though a document has been presented for registration relating to that property, it has not yet been registered awaiting legal opinion, and that he would suitably advise that the document shall not be registered without permission of the Civil Court, where the suit relating to that property is pending. It would suffice to place the aforesaid statement on record and nothing remains for further consideration in the matter.

5. It is pursuant to the above order, the 3rd respondent has directed the petitioner to get the permission of the Civil Court before presenting any document for registration.

6. The learned counsel for the petitioner sangam submitted that the suit was filed by the 5th respondent and if the 5th respondent wanted to restrain any one from alienating the property, he has to file an appropriate application before the Court and seek for an interim order. The 5th respondent cannot be allowed to site the pending suit and restrain the 3rd respondent from registering the documents pertaining to the subject property. The learned counsel further submitted that this Court while passing the earlier order on 27.07.2020, merely recorded a letter that was submitted by the Sub-Registrar before the concerned Civil Court on 21.02.2020.

7. The learned counsel submitted that the stand taken by the 3rd respondent is unsustainable in the eye of law and the 3rd respondent has to entertain the documents and even if ultimately the suit is decreed in favour of the 5th respondent, such transaction will be hit by the provisions of the Transfer

of Property Act and such transactions will be subject to lis pendens.

8. Per contra, Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of respondents 1 to 3, submitted that a letter was given by the 3rd respondent before this Court only to ensure that 3rd party rights are not created during the pendency of the suit. The learned counsel further submitted that the 3rd respondent does not have any objections in registering the document if appropriate orders are passed by this Court.

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

10. The 5th respondent has approached the Civil Court and he has filed O.S.No.48 of 2019, seeking for the relief of partition and separate possession of 1/27th share in the suit properties. It is also seen that the 5th respondent has filed yet another suit in O.S.No.58 of 2017 in which she has claimed for the relief of permanent injunction restraining the defendants not to alienate the suit properties. In both the suits, there is no order passed by the Competent Civil Court injuncting from dealing with the suit properties. What the 5th respondent was not able to achieve before the Civil Court is now sought to be achieved through the 3rd respondent by virtue of a letter given before this Court dated 21.02.2020. The 3rd respondent is a statutory authority, who has to strictly perform his function in accordance with law. This Court exercising its jurisdiction under Article 226 of Constitution of India can never prevent a statutory authority from performing his function. Therefore unless and otherwise a competent civil Court passes any interim order restraining the alienation of the property, the 3rd respondent has to entertain the documents and register the same, if it is otherwise in order. Ultimately, even if the suit is decreed, the transaction will be subject to the rule of lis pendens. There is no law in force which says that no transaction can take place during the pendency of the suit. That is exactly why Section 52 of the Transfer of Property Act, provides a solution for transactions that take place during the pendency of the suit.

11. In view of the above discussion, the impugned letter of the 3rd respondent dated 21.02.2020 is hereby quashed and the 3rd respondent is directed to entertain the documents submitted for registration and register the same, if it is otherwise in order. It goes without saying that the necessary stamp duty and registration fee will be paid at the time of submitting the document for registration.

12. This writ petition is accordingly allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

rka

To

1. The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai - 600 028.
2. The District Sub-Registrar,
Erode Sub-Registrar Office,
Rangampalayam,
Erode - 638 009.
3. The Sub Registrar,
SRO Office,
Avalpoondurai,
Kangayam Road,
Erode - 638 115.

+1cc to Mr.Valliappan, Advocate SR.29865
+1cc to the Government Pleader SR.29903

WP No.12585 of 2020

MG(CO)
CB(02/11/2020)

सत्यमेव जयते

WEB COPY