

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

W.P.No.16450 of 2020

Mr.Jahabar Ali

... Petitioner

Vs.

The Joint Sub -Registrar -II
Office of the Joint Sub Registrar- II
Mayiladuthurai Mayiladuthurai District.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the Impugned check Slip No.RFL/ Joint Sub Registrar II Mayiladuthurai/24/2020 dated 27.8.2020 issued by the respondent and to quash the same as illegal and consequently directing the respondent to register the sale deed dated 26.8.2020 presented by the Petitioner for registration and release the same to the Petitioner.

For Petitioner : Mr. Y. Mohammed Ghouse

For Respondents: Mr.T.M. Pappiah, Spl.Govt. Pleader

ORDER

On consent given by either side, the main Writ Petition has been taken up for final hearing.

2. This Writ Petition has been filed challenging the impugned Check Slip issued by the respondent dated 27.08.2020 and for a consequential direction to the respondent to register the Sale Deed dated 26.08.2020 and release the same to the petitioner.

3. The case of the petitioner is that he was desirous of purchasing certain lands in Nidur Village. The further case of the petitioner is that the property originally belonged to one Mohammed Sultan and this was inherited by 18 of his legal heirs. It is stated that all the joint owners of the subject property except one sister executed a Power of Attorney with respect to the subject property.

4. The joint owners along with the sister wanted to sell the subject property in favour of the petitioner. When the sale deed was presented for registration, the respondent refused to register the Sale Deed through the impugned check slip on the ground that the original title deed has not been submitted and the patta does not stand in the name of the legal heirs with respect to the subject property.

5. Heard Mr.Y.Mohammed Ghouse, learned counsel appearing for the petitioner and Mr.T.M.Pappiah, learned Special Govt. Pleader appearing for the respondents.

6. It is seen from the records that there are nearly 18 joint owners in the subject property. Out of these joint owners, 17 of them have executed a Power of Attorney in favour of one Fazal Rahman and it was also adjudicated before the respondent. It is also seen from the records that there is a statutory declaration of legal heirs which has been properly certified before the Consulate in Malaysia. With regard to the patta, it is seen that the same stands in the name of the original owner namely Mohammed Sultan. A careful perusal of the entire documents shows that there is a prima facie material that establishes the fact that the subject property originally belonged to Mohammed Sultan and on his demise, the property devolved upon 18 legal heirs. The declaration of the legal heirs duly certified before the Consulate in Malaysia also prima facie shows that those are the legal heirs who are claiming the property through the original owner namely Mohammed Sultan. It is also seen that the original title deed pertaining to the property was lost in Malaysia and a certificate has also been issued by the Malaysian Police in this regard on 5.8.2019. A translated copy of the report has also been filed in the typed set of papers. The respondent has refused the registration of the sale deed on the ground that the original title deed is not available and that the legal heirship certificate has not been issued by the proper authority and also for the reason that the patta does not stand in the name of the persons claiming themselves to be the legal heirs.

7. In the considered view of this Court, there is overwhelming material to come to a prima facie conclusion with regard to the ownership of the property and also with regard to the legal heirs of the original owner namely Mohamed Sultan. The patta also stands in his name and with regard to the loss of title document, there is also a police report that is available in the typed set of papers given by the Malaysian Police.

8. In view of the above, this Court has no hesitation to interfere with the impugned refusal check slip issued by the

respondent on 27.08.2020 and the same is hereby quashed. There shall be a direction to the petitioner to submit the sale deed for registration along with two self declared affidavits and also the certified copy of the title document. One affidavit shall explain the facts with regard to the loss of document and the certificate given by the Police and the other affidavit shall extract the legal heirs of the original owner namely Mohammed Sultan. The respondent on receipt of the document along with these affidavits, shall proceed to register the document, if it is otherwise in order. The petitioner shall also pay the necessary stamp duty and registration fees at the time of presenting the document. The respondent shall release the document to the petitioner after registration.

9. This Writ Petition is allowed with the above directions. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Joint Sub -Registrar -II
Office of the Joint Sub Registrar- II
Mayiladuthurai Mayiladuthurai District.

+1cc to Mr.Y.Mohamed Ghouse, Advocate Sr.37818

+1cc to the Government Pleader Sr.37965

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W.P.No.16450 of 2020

pm[co]
srg 07/12/2020

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