

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.08.2020

CORAM

THE HONOURABLE THIRU JUSTICE **N.ANAND VENKATESH**

W.P.No.23816 of 2019 and
W.M.P.Nos.23676 and 23677 of 2019

1.Mrs.K.Vassandha, Female, 66 years,
W/o.S.Kannan,

2.Mrs.B.Vijayalakshmi, Female, 70 years,
W/o.V.Baalasubramanian,

Both represented by their Power Agent

Mrs.Gowri, Female, 60 years,

W/o.Mr.Gajendiran,

No.14, Kannadasan Street,

Ganapathi Nagar,

Murungapakkam,

Puducherry.

.. Petitioners

versus

1.The Union Territory of Puducherry,

Rep by the Inspector General of Registration,

Chief Secretariat,

Beach Road,

Puducherry.

2.The District Registrar,

Registration Department,

Saram, Puducherry.

3.The Sub-Registrar Oulgaret,
Oulgaret Registration Department,
Oulgaret, Puducherry.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent, the District Registrar, Puducherry dated 04.12.2018, passed in Appeal No.5 of 2018 and quash the same and consequently, direct the third respondent to register the sale deed pertaining to the property of the petitioners.

For Petitioners : Mr.V.Ragavachari for
Mr.V.S.Senthil kumar

For Respondents: Mr.B.Nambi Selvan, SGP

ORDER

The present writ petition has been filed challenging the impugned order passed by the second respondent dated 04.12.2018, in Appeal No.5 of 2018, wherein, the District Registrar had confirmed the order passed by the Sub-Registrar, refusing to register the document presented by the petitioners for registration.

2. The case of the petitioners is that they had purchased the subject property by virtue of three sale deeds, two of the sale deeds dated 23.06.1998 and third sale deed dated 05.02.2002. The property was divided and a portion of the property was sold in favour of one K.Vassandha by sale deed dated 23.06.1998. Subsequent to the purchase of the subject property, a portion of the property was sold in favour of one Umamaheshwari by sale deed dated 19.05.2014 and another portion was sold in favour of S.Gayathri, represented by her guardian, again on 19.05.2014.

3. The further case of the petitioners is that the petitioners have decided to sell their respective properties retained by them and a sale deed was executed on 23.10.2018, in favour of one K.Durai. When the document was presented for registration before the third respondent, it was refused to be registered and an order of refusal was passed on 23.10.2018. Aggrieved by the same, the petitioners have filed an appeal before the second respondent and the second respondent by the impugned order dated 04.12.2018, confirmed the order passed by the third respondent and refused to register the document submitted by the petitioners. Aggrieved by the

same, the present writ petition is filed before this Court.

4. Mr.V.Ragavachari, learned counsel appearing for the petitioners submitted that the second respondent went beyond his authority by undertaking the exercise of tracing the title over the property. The learned counsel would also submit that the earlier documents that were submitted for registration also traced the title from one Vijayarangam and when those documents were registered, there is no reason to reject the present document on the ground of the alleged defect in tracing the title. The learned counsel submitted that the exercise done by both the third respondent and as confirmed by the second respondent, with regard to the tracing of title, is beyond their jurisdiction and the authorities have unwittingly assumed the jurisdiction of the Civil Court.

5. The learned counsel appearing for the petitioners would further submit that the registration was refused on two more grounds viz., deficit stamp duty and non production of life certificate of principal. The learned counsel submitted that even in the grounds of appeal, that was raised before

the second respondent, it was made very clear that the deficit stamp duty will be paid and the petitioners will also produce the life certificate at the time of registration. Even without considering the undertaking given by the petitioners, the second respondent has proceeded to pass the impugned order and confirmed the order passed by the third respondent.

6. The second respondent has filed a counter affidavit. The relevant portion of the counter affidavit is extracted hereunder:

“ 9. I submit that in the instant case, it was clear from the order of refusal of the Sub-Registrar and the pleadings/supporting documents filed by the appellants, that the document presented/the executants comply with the requirement of Section 34 and 35 of the Registration Act. However, there is no linkage of the executants with reference to the registered holders in revenue records as required under Rule 28 and 54 of the Puducherry Registration Rules, 1969 (as amended). ”

10. I submit that the power of attorney deed executed by one Vijayarangam in favour of one Ramakrishnan vide document No.1482/1995 dated

11.09.1995 registered at Oulgaret Sub-Registry Puducherry is the root document on which the further documents have been executed. There is no proof as to how the said Vijayarangam has link with the registered holders. Based on the power deed, the above said Ramakrishnan has sold the entire extent of 12.00 Ares by way of two sale deeds vide documents No.1347/1998 and 1348/1998, for an extent of 6.00 Ares each, in favour of one Gajendiran and one Vasanthi respectively. In turn, the said Gajendiran has sold the property, 3.00 Ares each, to one Vasantha and one Vijayalakshmi who are the appellants/executants herein, vide documents No.2942/1998 and 4827/1998 respectively. The property as per revenue records stood/stands in the name of several persons, but the said Vijayarangam disposed the entire property. He does not have linkage with the registered holders as per revenue records. As a sequel to it, being the successor-in-title of the said property, the appellants/executants also do not have linkage with the registered holders as per revenue records.

11. I submit that in the civil suit involving the property under conveyance there are references that the

said property is a pond with dry land and it is common to five persons. The Hon'ble Principal District Judge in A.S.No.311 of 2006 while confirming the judgment and decree of the learned Additional Subordinate Judge, Puducherry in O.S.No.10 of 1998 observed that "the plaintiff has not proved his case and his not entitled to decree of declaration of title over the suit schedule property. The defendants have produced some documents with regard to the property and they have not filed any counter claim and not paid the court fee, therefore, their rights over the property cannot be decided in the suit. However, those documents also revealed that the suit property is common pond for five persons".

12. I submit that, from the above, it was clear that the predecessor-in-title of the executants I.e., the said Vijayarangam, did not have link with the registered holders. If he had exclusive right or link over the said property, he could have taken step to effect change in the revenue records so as to exclude the names found in the said records. But he has not done so. Furthermore, even after the observation made by the Hon'ble Principal District Judge Court in A.S.No.311 of 2006, neither the

appellants/executants nor their predecessor-in-title had filed any counter claim or had taken step to get a decree of declaration from the court of law so as to establish their exclusive title over the said property. In such circumstances the executants failed to establish their linkage with the registered holders as per revenue records, as required under Rule 54 of the Puducherry Registration Rule, 1969. Therefore, the document presented, did not fulfill the requirement of Rule 54 of the Puducherry Registration Rule, 1969. Verifying linkage of documents does not amount to verification of title. The Hon'ble high Court of Judicature at Chennai in W.P.No.19418 of 2008 and consequent Review Application No.115 of 2008(Pandurangan Vs. The Sub-Registrar, Reddiarpalayam & others) has upheld the validity of Rule 54 requiring verification of linkage of document with reference to the Registered holder.

13. I submit that as pointed out by the appellant in the appeal there was no stay restraining the Sub-Registrar from registering the document. Nor was the Sub-Registrar a party to the litigation. Therefore, mere pendency of litigation was not a ground for refusing to register a

document. Hence, the document presented was not bound to be refused for registration on this ground. However, the deficient stamp duty is a valid ground for refusal. Similarly, non-production of life certificate of Principals is another requirement which was insisted upon by the Sub-Registrar. The Hon'ble Supreme Court has upheld the validity of a circular issued by the Inspector General of Registration, Tamil Nadu requiring production of the life certificate of the Principal. Therefore, the grounds mentioned at serial number 2 & 3 of the third respondent's order are valid grounds for refusing to register a document.

14. I submit that in view of the above, the document presented for registration by the appellants was liable to be refused for registration. However, the appellants in the memorandum of appeal had undertaken to apy the requisite stamp duty and produce the life certificate of the Principals, if admitted for registration. Therefore, those grounds could be condoned. However, the document presented does not fulfill the requirement of Rules 28 & 54 of the Pondicherry Registration Rules, 1969 (as amended). Therefore, in view of the above, the document presented

by the writ petitioners was refused for registration.

15. I submit that the contention of the writ petitioners that since all the points raised in the order of the 3rd respondent have been satisfied, the 2nd respondent ought to have passed an order directing the 3rd respondent to register the sale deed, is a misconceived notion. The 2nd respondent being an appellate authority is well within his power to go into all the aspects of the issue emerging from the documents placed before him. If the lower authority i.e., the Sub-Registrar had failed to see certain aspect, the appellate authority is not bound to gloss over it. Therefore, it is not correct to say that the impugned order has been passed traversing beyond the scope of the order of refusal.

16. Further on perusal of the release deed No.2774 of 1993 executed in favour of Thiru.Vijayarangam by his family members, it is ascertained that the right over the schedule property has been derived from his ancestor Thiru.Chinnakulathu Thandavarayan as per the patta No.662. But Thiru.Chinnakulathu Thandavarayan is one among the seven join pattadar only and hence he couldn't

claim right over the entire schedule of property as per the revenue record. Also in the judgment in A.S.No.311 of 2006 made by the Principal District Judge at page no.12 para no.19, it is observed that “but according to Ex.10, the suit properties belong to Kolandaivelu and others. But it is not the case of the plaintiff's case that he is one of the share holders of the suit property, per contra the plaintiff's case is that he is the absolute owner of the suit property. While so, the plaintiff has to prove that how he acquired the property and what about the other share as contained in Ex.10. But the plaintiff has miserably failed to prove his case”. In the above said case the plaintiff Thiru.Muniappan @ Alagappan had claimed right over the entire schedule property through his ancestor Thiru.Kulandaivelu S/o.Muniappa Gramany who is one among the seven joint patta holder and the claim has been dismissed by court stating that he can claim as one of the share holder but not absolute owner of the suit property. In the present case also, the petitioner's seller Thiru.Vijayarangam's ancestor is one of the joint pattadar and hence he could not claim right over the entire schedule property.

17. I submit that the writ petitioners have contended that 6 sale deeds and 3 power of attorney deeds have been registered by the 3rd respondent for the same property earlier and all of sudden the 2nd respondent cannot say the executants failed to establish linkage. The writ petitioners have further contended that the impugned order was passed as early as on 04.12.2018 and till date no action has been taken on the registered documents pertaining to the same property and this is more than sufficient to state that the 2nd respondent acted in biased manner. In this connection, I submit that the 2nd respondent is bound to consider and pass order only in respect of the document which is in question and not other documents which have been registered in the past. Even if the documents registered in the past do not have linkage with the registered holder in the revenue records, the second respondent is not empowered to set aside or annul such documents. Therefore, the allegation of the writ petitioners is baseless.

18. I submit that the writ petitioners herein ought to have filed a civil suit before the competent civil court, against the order of refusal of the 2nd respondent, within

30 days after the making of order, under Section 77 of the Registration Act, 1908. The order was passed on 04.12.2018 and it was issued to him on 05.12.2018. However, the petitioners have not instituted any suit so far. Having failed to avail as well as to exhaust the remedy available to them under the law, they have now approached this Hon'ble Court by way of writ in subversion of the established procedure of law.”

7. Mr.B.Nambi Selvan, learned Special Government Pleader appearing for the respondents, apart from reiterating the contention raised in the counter affidavit, submitted that the present writ petition itself is not maintainable, in view of the availability of an alternative remedy to the petitioners to file a civil suit before the competent civil court. The learned counsel further submitted that the title that is traced by the petitioners did not have the proper link with regard to the original title. The learned counsel also submitted that there was no proof to show as to how the original vendor viz., Vijayarangam, got the title over the entire property. The learned counsel further submitted that the exercise conducted by the second and the

third respondents was merely to verify the linkage of the document of title and that will not amount to verification of title over the property. The learned counsel, in order to substantiate his submissions, relied upon Rules 28 and 54 of the Puducherry Registration Rules, 1969.

8. This Court has carefully considered the submissions made on either side and the materials available on record. A careful reading of the impugned order passed by the second respondent, confirming the order passed by the third respondent would show that there are only three grounds, based on which, the authorities have refused to register the document submitted by the petitioners. Those grounds are

A.) no linkage in the document as to how the original vendor viz., Vijayarangam, got the title over the property.

B.) deficit stamp duty and

C.) Non production of life certificate of the principal.

Insofar as the second and third grounds are concerned, this Court need not go into those issues. The petitioners themselves have given an undertaking that the deficit stamp duty will be paid and the life certificate will be

produced at the time of registration. By recording the undertaking given by the petitioners, those two issues can be closed.

9. The only other issue that requires consideration is with regard to the absence of linkage to the title of one Vijayarangam. According to the second and third respondents, the said Vijayarangam, had derived his title from his ancestors viz., Thiru.Chinnakulathu Thandavarayan. The second and third respondents have gone in detail in analysing the judgment passed by the Principal District Judge, Puducherry, in A.S.No.311 of 2006 and had particularly taken into consideration Ex.A10, that was filed in the said suit. A finding given by the said civil court in the appeal, was also taken into consideration. After analysing all these materials, the second and third respondents have come to the conclusion that the ancestor of Vijayarangam is only, one of the joint pattadar and he did not have the right to claim a right over the entire subject property. It is really surprising that the second and the third respondents have undertaken the exercise of tracing the original title and thereby have exceeded their jurisdiction beyond what was required under Rules 28 and 54 of the Puducherry Registration Rules, 1969.

It is more so, since all the earlier six sale deeds and three power of attorney deeds pertaining to the very same property, have been entertained and registered by the third respondent. At that point of time, the third respondent never thought it fit to point out the so called lack of linkage in the title to the property. It is now raised for the first time when the document was presented in the year 2018.

10. In the considered view of this Court, it is not within the realm of the second and third respondents to start interpreting the judgment of the competent civil Court rendered in civil proceedings. The authorities cannot be allowed to pick a finding given in the proceedings and start questioning the original title over the property. It is more so, since there were no rival claimants who were claiming any right over the same property. Therefore, the decision making process that was adopted by the second and the third respondents by questioning the original title over the property, goes beyond their jurisdiction and the same is liable to be interfered with by this Court.

11. With regard to the preliminary objection raised by the learned Special

Government Pleader on the maintainability of the writ petition on the ground that as alternative remedies available, is also not sustainable. The alternative remedy is only a self imposed restriction and it is not an absolute one which will go to the extent of preventing this Court to exercise its jurisdiction under Article 226 of the Constitution of India. In the present case, this Court has specifically found that the second and third respondents have acted beyond their jurisdiction. Therefore, the order passed by the second and third respondents suffers from excess of jurisdiction. Under such circumstances, this Court can exercise its jurisdiction under Article 226 of the Constitution of India and a reference can be made to the judgments of the Hon'ble Supreme Court of India reported in **AIR 1958 SC 86** and **AIR 1969 SC 556**.

12. In the result, the impugned order passed by the second respondent dated 04.12.2018, confirming the order passed by the third respondent, is hereby quashed and the third respondent is directed to entertain the sale deed presented by the petitioners. The petitioners shall pay the deficit stamp

duty and the power of attorney agent shall produce the life certificate at the time of registration. On receipt of the same, the third respondent shall proceed to register the document and release the same to the petitioners.

13. With the above direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24.08.2020

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Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking order



WEB COPY

To

- 1.The Inspector General of Registration,
The Union Territory of Puducherry,
Chief Secretariat,
Beach Road, Puducherry.
- 2.The District Registrar,
Registration Department,
Saram, Puducherry.
- 3.The Sub-Registrar Oulgaret,
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