

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2020

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.24289 of 2017 and
W.M.P. No.25672 of 2017

K. Palaniammal

... Petitioner

.vs.

1. District Registrar (Administration),
Namakkal.

2. Joint Sub Registrar - II,
Namakkal.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuing a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent dated 21.12.2016 and made in I.No.37/Aal/2016, quash the same and direct the 2nd respondent to return the Partition deed dated 19.01.2016 bearing Pending Document No.10 of 2016.

For Petitioner : Mr. Tranquebar Dorai Vasu

For Respondents : Mr. P. P. Purushothaman
Govt. Advocate

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent dated 21.12.2016 to quash the same and direct the 2nd respondent to return the Partition deed dated 19.01.2016 bearing Pending Document No.10 of 2016.

2. It is the case of the petitioner that the petitioner presented a partition deed dated 19.01.2016 for registration before the 2nd respondent in Pending Document No.10 of 2016. On 15.11.2016, the 1st respondent directed the petitioner to pay the additional stamp duty of Rs.1,08,49,880/- . Subsequently on 30.11.2016, the 1st respondent sent a communication to the petitioner stating that the document could not be returned without registration. On 01.12.2016, the petitioner's family

members requested the 1st respondent to return the Pending Document No.10 of 2016 without registration, thereafter, the 1st respondent issued the impugned order dated 21.12.2016 calling upon the petitioner to pay the additional stamp duty of Rs.1,08,49,880/- , failing which, they will proceed under section 48 of the Stamp Act to recover the same. Subsequently, by letter dated 25.07.2017, the petitioner, as per Rule 107 of the Registration Rules framed by the Government of Tamil Nadu under section 69 of the Registration Act, as per Clause 17(2) (b)(iv) of the Table of fees, prepared under section 78 of the Registration Act, 1908, requested the 2nd respondent to return the pending Document No.10 of 2016 without registration. However, the respondents refused to return the pending document without registration. Hence, the petitioner has filed the present Writ Petition.

3. Mr. Tranquebar Dorai Vasu, learned counsel appearing for the petitioner submitted that the issue involved in the present Writ Petition is covered by the decision of this Court reported in 2018 (1) CTC 309 [Purushothaman Nath Rallan v. The Inspector General of registration cum the Chief Controlling Revenue Authority, Chennai and others], wherein I had an occasion to deal with this issue and held as follows:-

"... 14. On a perusal of Rule 107 of the Registration Rules, it could be seen that when an impounded document is received back from the Collector have adjudication of stamp duty, the Registering Officer shall immediately give notice in writing to the presentant or to the person authorized by the presentant to take delivery of the document either to take steps to complete the registration of the document or to take delivery of the document. From Rule 107, it is clear that even after adjudication of the stamp duty, the Registering Officer should give notice in writing to the executant either to take steps to complete the registration of the document by paying the adjudicated stamp duty or to take delivery of the document. The words either to take steps to complete the registration of the document or to take delivery of the document would mean that the executant should pay the necessary stamp duty as adjudicated by the Authority and get the document registered or to take delivery of the document as it is, without getting it registered, in which case, the document shall not have any legal sanctity. The said Rule is also supported by the provisions of Clause-17 (2) (b) (i) of the Table of Fees prepared under Section 78 of the Registration Act. As per the said Clause, a fixed fee of Rs.20/- has been levied for withdrawing a document

from registration.

15. It is pertinent to note that in the case on hand, the document, which was presented for registration on 12.08.2015 has not yet been registered, which is evident from the fact that only a pending number in P.No.180/2015 has been assigned by the 3rd respondent. In the case of the document being registered, in such a case, the petitioner cannot seek for withdrawing the document from registration. When the document itself has not yet been registered, I am of the considered view that the provisions of Rule 107 of the Registration Rules and the provisions of Clause-17 (2) (b) (i) of the Table of Fees prepared under Section 78 of the Registration Act are applicable.

16. In the judgments relied upon by the learned Additional Advocate General, the provisions of Rule 107 of the Registration Rules and the provisions of Clause-17 (2) (b) (i) of the Table of Fees prepared under Section 78 of the Registration Act were not relied upon by the parties therein. Since the parties did not rely upon the provisions of Rule 107 of the Registration Rules and the provisions of Clause-17 (2) (b) (i) of the Table of Fees prepared under Section 78 of the Registration Act, this Court had no occasion to deal with the said provisions in those two judgments. In the case on hand, since the learned counsel appearing for the petitioner is relying upon those two provisions, I am of the considered view that both the provisions are applicable to the case of the petitioner. If there is no provision under the Act for withdrawing a document from registration, there is no necessity for having Rule 107 of the Registration Rules and Clause-17 (2) (b) (i) of the Table of Fees prepared under Section 78 of the Registration Act, enabling the executant to withdraw the document. From these two provisions, I am of the view that the petitioner can take delivery of the pending document in P.No.180/2015 dated 12.08.2015 without paying the demand made by the 3rd respondent and without getting the document registered. In such an event, the document viz., the Settlement Deed executed on 12.08.2015 shall not have any legal sanctity and the same should be treated as a cancelled document. The petitioner cannot rely upon the said document before anyone or any authority whomsoever.

17. In these circumstances, I direct the 3rd respondent to return the Settlement Deed dated

12.08.2015 pending for registration in P.No.180/2015 as requested in the petitioner's petition dated 07.11.2016 to the petitioner within one week from the date of receipt of a copy of this order, without demanding any additional stamp duty from the petitioner. However, I make it clear that the Settlement Deed dated 12.08.2015 presented for registration and pending in P.No.180/2015, shall not have any legal sanctity and the said document should be treated as a cancelled document and it should not be produced before any individual or any authority for any reason whatsoever."

The learned counsel also submitted that the said Judgment has been confirmed by the Division Bench of this Court by its Judgment dated 06.06.2019 in Writ Appeal No.1763 of 2019.

4. On a reading of the above, it is clear that the issue involved in the present Writ Petition is identical to the issue involved in the judgment relied upon by the learned counsel for the petitioner.

5. Hence, following the ratio laid down in the judgment reported in 2018 (1) CTC 309 [cited supra] which is also confirmed by the Division Bench of this Court in W.A.No.1763 of 2019, dated 06.06.2019, the impugned order dated 21.12.2016 is set aside. Consequently, I direct the 2nd respondent to return the partition deed dated 19.01.2016 bearing pending Document No.10 of 2016 as requested by the petitioner by their letter dated 25.07.2017, within a period of two weeks from the date of receipt of a copy of this order, without demanding any additional stamp duty from the petitioner. However, I make it clear that the Partition Deed dated 19.01.2016 presented for registration in pending Document No.10 of 2016. shall not have any legal sanctity and the said document should be treated as a cancelled document and it should not be produced before any individual or any authority for any reason whatsoever.

With these observations, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

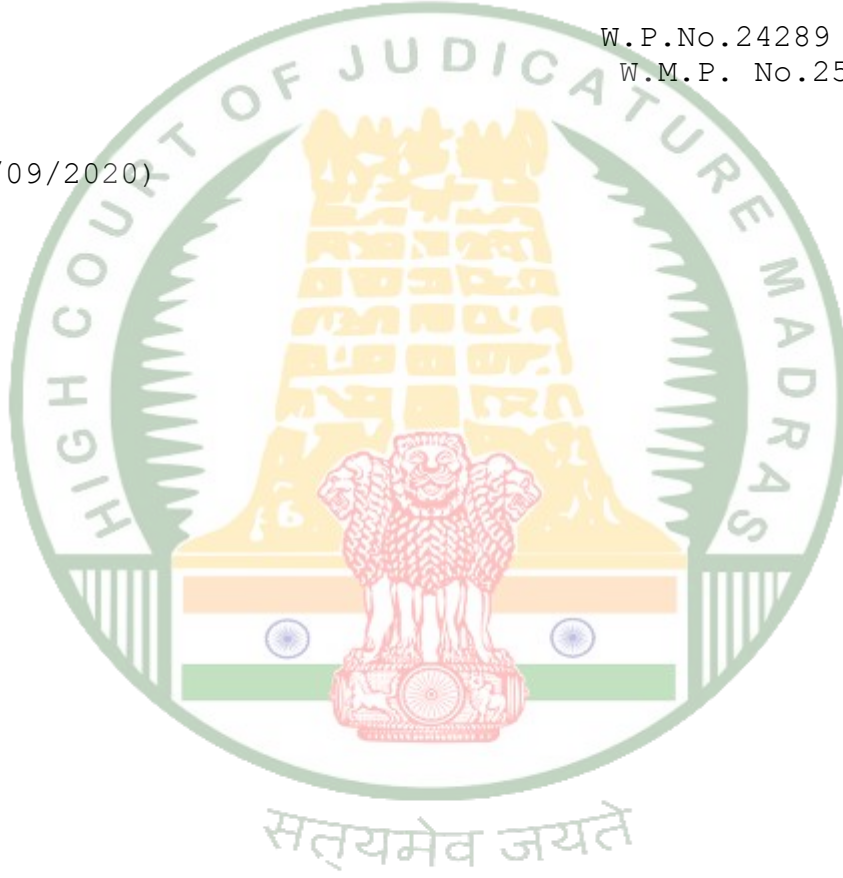
1. The District Registrar (Administration),
Namakkal.

2. The Joint Sub Registrar - II,
Namakkal.

+1cc to the Government Pleader, Sr.No.28659

W.P.No.24289 of 2017 and
W.M.P. No.25672 of 2017

svi (co)
rr ii (15/09/2020)



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