

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.No.34505 of 2019

Jayalakshmi

...Petitioner

-Vs-

1.The District Registrar,
O/o. The District Registrar,
Villupuram District,
Villupuram.

2.The Joint Registrar-II,
O/o. the Joint Registrar-II,
Tindivanam Taluk,
Villupuram District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent vide Na.Ka.No.131/2019 dated 29.07.2019 and quash the same as illegal and consequentially directing the 2nd respondent herein to register the Settlement Deeds executed by the petitioner in favour of her daughters in respect of the land bearing Survey No.24/16 measuring an extent of 0.28.0 ares and land bearing Survey No.26/12 measuring an extent of 0.12.5 ares situated at Ongur Village, Tindivanam Taluk, Villupuram District, in the light of the Judgment and Decree made in O.S.No.226 of 2006 on the file of the Principal District Munsif Court at Tindivanam.

For Petitioner : Mr.M.Venkadeshnan

For Respondents : Mr.T.M.Pappiah

Special Government Pleader

ORDER

This Writ Petition has been filed challenging the refusal of the second respondent to register the settlement deed executed by the petitioner in favour of her daughters.

2. The case of the petitioner is that the properties were originally owned by the father of the petitioner and he died intestate on 10.09.1997 leaving behind the petitioner and her brothers and sisters as his legal heirs. There was a difference

of opinion between the parties and the same resulted in the filing of the Civil Suit by the petitioner in O.S.No.226 of 2006 on the file of Principal District Munsiff Court, Tindivanam claiming for her share in the property. A preliminary decree was passed and as against the same an appeal was filed in A.S.No.29 of 2009. The petitioner also filed a Cross Appeal in A.S.No.1 of 2019. Both the Appeals were dismissed and the Judgment of the Trial Court was confirmed by Judgment and Decree dated 29.07.2011.

3. Thereafter an application was filed in I.A.No.1618 of 2012 for passing of the final decree. According to the petitioner a final decree was also passed and the petitioner also took possession of the properties allotted to her in E.P.No.20 of 2015.

4.The petitioner wanted to settle her property in favour of her daughters and therefore she executed settlement deed. When this document was presented for registration, the second respondent refused to register the documents on the ground that there are previous encumbrances created before the decree was passed in the Civil Court and therefore unless the encumbrance is cancelled, the document cannot be registered. Aggrieved by the same the present writ petition has been filed before this Court.

5.The learned counsel for the petitioner submitted that even before a decree was passed by the Civil Court, the siblings had dealt with the property illegally and created certain documents. The learned counsel submitted that even this issue was considered before the Civil Court and ultimately a decree came to be passed in favour of the petitioner and the possession was also handed over to the petitioner. The learned counsel therefore submitted that the subsequent decree passed in her favour will efface the earlier documents created. Therefore, the learned counsel submitted that the second respondent went wrong in refusing to register the settlement deed executed by the petitioner.

6.Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the respondents submitted that there is an encumbrance created and it is reflected in the encumbrance register. Therefore this encumbrance needs to be cancelled or reversed failing which the subsequent documents cannot be registered. The learned counsel submitted that if there is already a final decree passed in favour of the petitioner, the certified copy of the decree can be produced before the second respondent for registration and this will effectively counter the encumbrance entries which are already found in the register.

7.This Court has carefully considered the submissions made on either side and materials available on record.

8. In the considered view of this Court, the petitioner traces her right over the property by virtue of the preliminary decree passed in O.S.No.226 of 2006 and the final decree passed in I.A.No.1618 of 2012. The petitioner is also placing reliance upon delivery that was effected in E.P.No.20 of 2015. With these overwhelming documents, this Court is prima facie convinced with the title of the petitioner over the property which she is seeking to settle in favour of her daughters.

9. In view of the above, the petitioner is directed to present the Settlement Deed once again before the second respondent along with the certified copy of the preliminary decree and final decree. The respondents shall register these decrees first. By doing so the earlier entries found in encumbrance register gets reversed. Thereafter the second respondent can proceed to register the settlement deed executed by the petitioner in favour of her daughter.

10. This Writ Petition is disposed of with the above directions. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The District Registrar,
O/o. The District Registrar,
Villupuram District,
Villupuram.

2. The Joint Registrar-II,
O/o. the Joint Registrar-II,
Tindivanam Taluk,
Villupuram District.

+1cc to the Government Pleader, High Court, Madras, SR.No.21639

RSK(CO)
rli(22/05/2020)

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