



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.09.2020

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.15691 of 2018

N.Chithra Alagu

... Petitioner

Vs.

The Sub Registrar,
Sub Registrar Office,
Manamadurai,
Sivagangai District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pursuant to the respondent by his impugned proceeding in Na.Ka.No.55/2018 dated 03.04.2018 and quash the same consequently directing the respondent to register the petitioner's document in respect of properties in S.No.72/4B, in an extent of 19 cents, S.No.37/17B, in an extent of 19 cents and S.No.37/8A2 in an extent of 67 cents in M.Karisalkulam Village, M.Karisalkulam Group, Manamadurai Taluk, Sivagangai District.

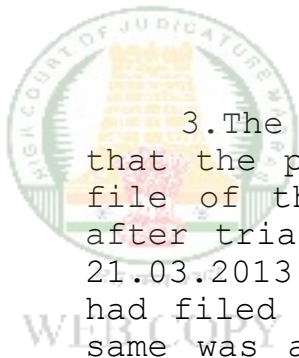
For Petitioner : Mr.J.John

For Respondent : Mr.K.Sathiya Singh
Additional Government Pleader

ORDER

This Writ Petition is filed to quash the order passed by the respondent in Na.Ka.No.55/2018 dated 03.04.2018 and to direct the respondent to register the petitioner's power of attorney document in respect of properties in S.Nos.72/4B, 37/17B and 37/8A2 situated at M.Karisalkulam Village, M.Karisalkulam Group, Manamadurai Taluk, Sivagangai District.

2.The grievance of the petitioner is that though he made a representation dated 26.03.2018 before the respondent to register the power of attorney executed by him in favour of his daughter, namely, Kokila in respect of the subject matter of the properties, the 2nd respondent rejected the claim of the petitioner and passed the impugned order dated 03.04.2018.



3.The learned counsel appearing for the petitioner would submit that the petitioner had filed a suit in O.S.No.125 of 2011 on the file of the District Munsif Court, Manamadurai for partition and after trial, a preliminary decree was passed by the civil Court on 21.03.2013 as prayed by the petitioner. Thereafter, the petitioner had filed a final decree application in I.A.No.597 of 2015 and the same was allowed on 17.09.2016 and that the Advocate Commissioner had demarcated the petitioner's share, as per the judgment and decree dated 21.03.2013. After the final decree, the petitioner applied for transferring the patta to the Tahsildar and was also issued with a patta in No.529 for the petition mentioned properties.

4.The learned counsel would further submit that since the petitioner is in possession and enjoyment of the said property, the power of attorney executed by the petitioner is proper and valid. Therefore, he would submit that the impugned order passed by the respondent dated 03.04.2018 is liable to be set aside.

5.The learned Additional Government Pleader appearing for the respondent would submit that as per Section 23 of the Tamilnadu Registration Act, any decree passed by the competent civil Court has to be registered within a period of four months from the date of receipt of a copy of that order. However, the petitioner has not registered the judgment and decree dated 21.03.2013 passed by the civil Court and has not given the particulars of the execution of the final decree passed by the civil Court. Therefore, he would submit that the respondent had rightly rejected the claim of the petitioner and passed the impugned order dated 03.04.2018.

6.Heard the learned counsel on either side and perused the available records.

7.On a perusal of the affidavit, it is seen that in pursuance to the final decree passed by the civil Court dated 17.09.2016, the petitioner applied for transferring the patta to the Tahsildar and was also issued with a patta in No.529 for the petition mentioned properties and now, he is in exclusive possession and enjoyment of the same. Further, the petitioner has given the details of the Advocate Commissioner's report before this Court, which is enclosed in the typed set of papers and warrants consideration by the respondent, after giving opportunities to the parties concerned.

8.The respondent ought to have ascertained whether the final decree passed in the suit in O.S.No.125 of 2011 on the file of the District Munsif Court, Manamadurai, had attained finality and whether there is any objection from the contesting parties to register the power of attorney executed by the petitioner in favour of his daughter, Kokila, before passing the impugned order. If there is no objection from the contesting parties, then, there is no legal impediment for the respondent to register the said power of



attorney. However, without ascertaining the aforesaid position, the respondent had rejected the claim of the petitioner and passed the impugned order dated 03.04.2018, which warrants interference of this Court.

9. In view of the foregoing discussions and in view of the facts and circumstances of the case, this Court has no hesitation to quash the impugned order and is inclined to pass the following direction:-

the impugned order passed by the respondent dated 03.04.2018 is hereby quashed and the matter is remanded back to the respondent, who shall consider the matter afresh and shall pass appropriate orders, on merits and in accordance with law, after affording due opportunity to the parties concerned, within a period of twelve weeks from the date of receipt of a copy of this order;

10. In the result, the Writ Petition stands allowed with the above terms. No costs.

Sd/-

Assistant Registrar (A.S)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Sub Registrar,
Sub Registrar Office,
Manamadurai,
Sivagangai District.

+1 CC to Mr.J.JOHN, Advocate SR-17050.
+1 CC to the SPL GP SR-17147.

W.P. (MD) No.15691 of 2018
16.09.2020

(CO)
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