

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. No.37713 of 2015

Rajeswari

... Petitioner

Versus

1. The Sub Registrar,
Thammampatty & Post,
Gangavalli Taluk,
Salem District.

2.K.Palaniappan

.. Respondents

(R2 impleaded vide order dated 05.02.2021 made in M.P. No.1 of 2015 in W.P. No.37713 of 2015)

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the Sub Registrar, Thammampatty, the respondent herein, to release the Sale Deed dated 07.06.2013 to the petitioner, which was executed by the Subordinate Judge, Attur in favour of the petitioner and registered as Document No.P201300007 by the Sub Registrar, Thammampatty on 18.06.2013 in pursuance of the letter dated 12.06.2013 sent to the respondent by the Subordinate Judge, Attur.

For Petitioner : Mr. R.Thirugnanam

For Respondents 1 : Mr. P. P.Purushothaman
Government Advocate

2 : Mr. L.Mouli

ससयमेव जयते
O R D E R

This Writ Petition is filed for issuing a Writ of Mandamus directing the Sub-Registrar, Thammampatty, the respondent herein, to release the sale deed 07.06.2013 to the petitioner which was executed by the Subordinate Judge, Attur, in favour of the petitioner and registered as document No.201300007 by the Sub Registrar, Thammampatty on 18.06.2013.

2. Brief facts that are necessary for the disposal of the Writ Petition are as follows. The petitioner filed a suit in O.S. No.153 of 2011 as against the second respondent herein for specific performance and obtained an ex-parte decree on 22.03.2012. The petitioner has filed an execution petition in E.P. No.64 of 2012. Thereafter, the petitioner got the sale deed executed by the learned Sub-ordinate Judge, Attur and the document was presented for registration. Based on the objection received from the second respondent, the Registrar

kept the document pending. Aggrieved by the same, the present Writ Petition is filed for the petitioner.

3. Learned counsel appearing for the petitioner submits that an ex-parte decree is valid until it is set aside in a manner known to law and that the decree should be considered as effective as if it is a decree passed after contest. He also relied upon the judgment of this Court in the case of Arukkani Ammal Vs. Guruswamy reported in [The Law weekly Volume 100 (1987) 707]. The relevant paragraph from the said order is as follows:

“ It is also difficult to appreciate the view taken by the District Munsif that ex parte decree cannot be considered to be 'full decree on merits'. A decree which is passed ex parte is as good and effective as a decree passed after contest. Before the ex parte decree is passed, the Court has to hold that the averments in the plaint and the claim in the suit have been proved. It is, therefore, difficult to endorse the observation made by the Principal District Munsif that such a decree cannot be considered to be a decree passed on merits. It is undoubtedly a decree which is passed without contest; but it is only after the merits of the claim of the plaintiff have been proved to the satisfaction of the trial Court, that an occasion to pass an ex parte decree can arise.”

Citing the above paragraph, learned counsel appearing for the petitioner submits that the ex-parte decree in O.S. No.153 of 2011 on the file learned Sub-Court, Athur, is valid until it is set aside and that the decree should be respected as if it is a decree passed on merits.

4. The second respondent has filed a counter affidavit inter alia, pointing out that the ex-parte decree was obtained fraudulently by the petitioner. It is stated in the counter affidavit that the petitioner has filed a suit by showing the false address of the second respondent so as to avoid service of summons to the defendant. The execution petition in E.P. No.64 of 2012, was for getting the sale deed through Court. It is the specific case of the second respondent that he does not reside in the place which was shown in the plaint as the place where he resides. The second respondent has produced before this Court the typed set of papers which contains the endorsement of the process server. The process server has made a specific endorsement to the effect that he could not serve notice on the second respondent in the execution petition as he is not residing in the place as shown in the summons.

5. If a decree of Court is obtained by fraud, the affected is entitled to approach the Court. The second respondent has already filed a suit in O.S.82 of 2013 on the file of the Sub Court, Attur, to declare his absolute title

and to declare that the sale deed dated 07.06.2013 and the decree and judgment in O.S. No.153 of 2011 on the file of Sub-Court, Attur, are null and void, invalid and obtained by fraud. This Court is of the view that the petitioner has approached the Civil Court by adopting inappropriate modes to get an ex parte decree. Since the element of fraud is apparent, going by the records, this Court is unable to give any direction to the Sub Registrar.

6. Having regard to the admitted facts and the specific contention of the second respondent that the decree was obtained by fraud coupled with the fact that the suit filed by the second respondent is pending, the first respondent shall wait till the disposal of the suit in O.S. No.82 of 2013, on the file of Sub Court Attur. Both the parties are agreeable for a direction to the learned Subordinate Judge, Attur, to dispose of the suit one way or the other within a stipulate time. Hence, this Court directs the learned Subordinate Judge, Attur, to dispose of O.S. No.82 of 2013, within a period of six months from the date of production of this order before the concerned Judge. It is open to the petitioner as well as the second respondent to seek appropriate relief. Upon further representation by any of the parties, it is open to the first respondent to pass orders in tune with the judgment and decree in O.S. No.82 of 2013.

Accordingly, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bkn
To

The Sub Registrar,
Thammampatty & Post,
Gangavalli Taluk,
Salem District.

2. The Subordinate Judge, Attur.

+1cc to Mr.L.Mouli , Advocate SR.No. 9663
+1 cc to Government Pleader Sr.No.9911

W.P. No.37713 of 2015

AJB (CO)
A.SK(22.06.2021)