



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.14347 of 2021

A.Kulandaivelu

... Petitioner

Vs.

1. The District Registrar of Salem,
Salem Collectorate,
Salem - 636 001.
2. The Sub - Registrar of Salem East,
(Gokul raj), Combined Registrar Department Office,
Near Kailash Maanasarovar School (CBSE),
Kumaragiri Bye pass,
Salem - 636014.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent to implement the proceedings of the 1st respondent in Na.Ka.No.1038/Aa1/2021 dated 25.02.2021 and direct the 2nd respondent to receive and register the sale deed of the petitioner dated 23.01.2021 within stipulated time may be fixed by this Court.

For Petitioner : Mr.B.Sridhar

For respondents : Mr.Yogesh Kannadasan
Government Advocate

ORDER

This Writ Petition has been filed to direct the 2nd respondent to implement the proceedings of the 1st respondent in Na.Ka.No.1038/Aa1/2021 dated 25.02.2021 and to receive and register the said deed of the petitioner dated 23.01.2021.

2. The case of the petitioner is that according to the petitioner, he is the owner of the property in S.No.16/1B, Punjai Hector 0.13.0, Thirvai 1.00 which is situated at Udayapatti Village, Salem Taluk and District. He purchased the above property from one Venkatachalam and the same was registered before the 2nd respondent vide Document No.623 of 2010 dated 11.02.2010. After



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purchasing the above property, the petitioner was in enjoyment of the same without any hindrance. Due to some economical condition, he wanted to sell the property to some third parties and hence he approached the 2nd respondent and submitted the sale deed document for registering the same. But the 2nd respondent did not receive the said document without assigning proper reason. One Arthanari had filed a suit against the petitioner in O.S.No.346 of 2009 before the Principal Sub Judge, Salem, for the relief of partition, permanent injunction and for other reliefs. The Principal Sub Judge decreed the suit in favour of the said Arthanari. But no declaration was granted against the petitioner's sale deed dated 11.02.2010 and the property bearing S.No.16/1B involved in the sale deed is not the subject matter of the suit in O.S.No.346 of 2009. Hence, according to the petitioner, he is the absolute owner of the property in S.No.16/1B and there is no legal hurdle or bar to register the sale deed as per law.

3. It is the further case of the petitioner that the refusal on the part of the 2nd respondent in receiving the document and registering the sale deed is highly illegal, condemnable and against the natural of justice. Section 22A of the Registration Act, 1908 which provides as follows:

"22A.1. Documents registration of which is opposed to public policy - (1) The State Government may, by notification, in the official Gazette, declare that the registration of any document or class of documents is opposed to public policy.

2. Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable."

In the present case, there is no notification has been issued by the State Government regarding the public policy. Hence the 2nd respondent has no power to refusal to register the document which is placed before him.

4. It is also the case of the petitioner that on 23.01.2021, the petitioner sent a legal notice to the respondents for registering the sale deed dated 23.01.2021. After receiving the said notice, the 1st respondent issued a proceeding to the 2nd respondent in Na.Ka.No.1038/Aa1/2021 dated 25.02.2021, directing the 2nd respondent to take action for registering the sale deed dated 23.01.2021. In spite of the said proceedings, the 2nd respondent did not come forward to register the document and hence the petitioner has approached this Court by filing this Writ Petition.



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5. The Learned Government Advocate appearing for the respondents has filed a counter affidavit stating that the sale deed dated 11.02.2010 executed by Venkatachalam and other to and in favour of the petitioner herein conveying 720 Sq.ft., comprised in Survey No.16/1B of Udaiyapatti Village, Salem Taluk, was registered as Document No.623 of 2010. The petitioner has not purchased Hec.0.13.0 in Survey No.16/1B as claimed by him. In fact, he has not at all presented any Sale Deed for registration. Someone has approached the respondent and enquired whether document concerning Survey No.16/1B of Udaiyapatti Village of Salem Taluk could be registered. The respondent verified the records and found that there was a protest petition from Mr.S.Arthanari requesting the respondent not to register any document in respect of Survey No.16/1B - Hec.0.13.0 and other lands in view of the decree dated 16.03.2015 made in O.S.No.346 of 2009 on the file of the Principal Subordinate Judge, Salem. In the said decree, it has been decreed that the defendants 2 to 4 therein (Petitioner is the 4th defendant) be and are hereby restrained by means of permanent injunction not to alienate the plaintiff share. Further, it has been decreed that the defendants shall divide the suit properties into 9 equal shares by metes and bounds and allot 4 equal share to the plaintiff in respect of Suit Item Nos.2 and 3, in which, the Survey No.16/1B - Hec.0.13.0 is included in Item No.2. Hence it was informed that if any sale deed is presented, an enquiry will be conducted on the protest petition of Mr.S.Arthanari as per this Circular No.33/C1/2010 dated 15.09.2010 and 39708/C1/2018 dated 4.10.2018 of the Inspector General of Registration and thereafter no document was presented for registration.

6. It has been further stated in the counter that Suvey No.16/1B is included in Item No.2 of the suit in O.S.No.346 of 2009 on the file of the Principal Subordinate Judge, Salem and the defendants 2 to 4 have been restrained by means of permanent injunction not to alienate the plaintiff's share which includes the subject Survey No.16/1B. Hence the contention of the petitioner that Survey No.16/1B involved in the Sale Deed is not the subject matter of the suit in O.S.No.346 of 2009 and which is nothing to do with the above said property is not tenable.

7. Heard the learned counsel for the petitioner and the Learned Government Advocate appearing for the respondents, and perused the materials available on record.

8. On perusal of the records, it is seen that according to the petitioner, he is the owner of the property in S.No.16/1B, Punjai Hector 0.13.0, Thirvai



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1.00 which is situated at Udayapatti Village, Salem Taluk, Salem District and he purchased the said property from one Venkatachalam vide Document No.623 of 2010 dated 11.02.2010. After purchasing the said property, the petitioner was in enjoyment of the same without any hindrance, and thereafter, due to some economical condition, he wanted to sell the property to some third parties and hence he approached the 2nd respondent for registering his sale deed dated 23.01.2021. But the 2nd respondent refused to register the same without assigning proper reason and hence the petitioner has approached this Court.

9. The Learned Government Advocate appearing for the respondents submits that the petitioner has not purchased any property in Survey No.16/1B - Hec.0.13.0 which is situated at Udayapatti Village, Salem Taluk and District, as claimed by him. Further, the Learned Government Advocate submits that the petitioner has not at all presented any document for registration before the 2nd respondent. one Mr.S.Arthanari had filed a protest petition before the respondent, requesting not to register any document in respect of Survey No.16/1B - Hec.0.13.0 and other lands in view of the decree dated 16.03.2015 made in O.S.No.346 of 2009 on the file of the Principal Subordinate Judge, Salem, and thereafter, no document was presented for registration before the respondent.

10. On going through the materials on record, this Court finds that the petitioner has not presented any document for registration before the 2nd respondent in respect of property in Survey No.16/1B.

11. It is pointed out by the Learned Government Advocate appearing for the respondents that one Mr.S.Arthanari has filed a suit against the petitioner and 3 others in O.S.No.346 of 2009 and got a decree in his favour. As per the said decree, the petitioner and other defendants in the suit are restrained to alienate the property in Survey No.16/1B as it is included in Item No.2 of the suit schedule property. In order to disprove the contention of the Learned Government Advocate, no document has been produced before this Court on the side of the petitioner to show that the petitioner is the owner of the property in S.No.16/1B of Udayapatti Village, Salem Taluk and District and he purchased the same from one Venkatachalam vide Document No.623 of 2010 dated 11.02.2010.

12. In the absence of any document on the side of the petitioner, it is made clear that the property in S.No.16/1B is belonged to one Mr.S.Arthanari who is stated to have filed a suit in O.S.No.346 of 2009 and got



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a decree in his favour. Further, on going through the materials on record, it is found that already there is a protest petition filed before the respondent not to register any document in respect of Survey No.16/1B in view of the decree dated 16.03.2015 made in O.S.No.346 of 2009 on the file of the Principal Subordinate Judge, Salem. Hence this Court cannot direct the respondent to register the sale deed dated 23.01.2021 in favour of the petitioner.

13. In case, if any document in the hands of the petitioner to prove that the property in Survey No.16/1B is belonged to him, he can submit an application through online within a period of two months from the date of receipt of a copy of this order and establish the same under law. If any application is received from the petitioner within the said period, the respondents are directed to conduct an enquiry and pass appropriate orders in accordance with law after giving sufficient opportunity to the parties concerned, within a period of six months from the date of receipt of the application.

14. Accordingly, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

raja

To

1. The District Registrar,
Salem Collectorate,
Salem - 636 001.

2. The Sub - Registrar,
(Gokul raj), Combined Registrar Department Office,
Near Kailash Maanasarovar School (CBSE),
Kumaragiri Bye pass,
Salem - 636014.

+1CC to Mr.B.Sridhar, Advocate, Sr.No.42599

+1CC to Mr.Government Pleader, Sr.No.42314

W.P.No.14347 of 2021

GPL (CO)

K.RK. (20.09.2021)