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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2021

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.NO.18209 OF 2021

AND

W.M.P.NO.19439 OF 2021

1.Mrs.Poonkodi

2.Mrs.Papaal

...Petitioners

Vs.

1.The District Registrar,
In the Cadre of
Assistant Inspector General of Registration,
Door No.1/3, Vignesh Complex,
Ground Floor, P.N.Road,
Tirupur District - 641 602.

2.The Sub-Registrar,
Sub-Registrar Office Uthukuli,
South Veedhi, Nearby Police Station,
Uthukuli, Tirupur District - 638 751.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondent to consider the petitioners representation dated 22.07.2021 to cancel the partition deed dated 14.07.2020 registered as document No.1932 of 2020 at SRO, Uthukuli.

For Petitioners : Mr.A.Swaminathan

For respondents : Mr.Yogesh Kannadasan
Government Advocate



ORDER

The petitioners have filed a mandamus to direct the respondent to consider the petitioners representation dated 22.07.2021 to cancel the partition deed dated 14.07.2020 registered as Document No.1932 of 2020 before the SRO, Uthukuli.

2.The case of the petitioners is that their father Late Nanjapannadi along with his brothers Shankarpannadi and Palanipannadi bought a property measuring to an extent of acre 8.23 cents comprised in old Survey No.195 and new Survey No.183/2 at Agrahara Periyapalayam Village, Uthukuli Taluk, Tirupur District. According to the petitioners, they were enjoyed the property each acre 2.74 cents by oral partition. The petitioner submits that on 10.05.1973, petitioners father said Nanjapannadi died intestate leaving behind their mother Nachammal, Poonkodi, Papaal and 4 brothers viz., Thangarasu, Mani, Loganathan and Ayyadurai as his legal heirs.

3.The petitioner submits that thereafter their mother Nachammal died on 08.04.2017 leaving behind the daughters and sons and subsequently, the Tahsildar Uthukuli had also issued legal heir certificate dated 19.01.2020 in which all the six legal heirs names are found and they are entitled to 1/6th share to an extent of 45.5 cents each. Accordingly, the revenue records viz., A- register and patta were mutated and included the names of the all the six legal heirs for the above said property in patta No.318.

4.According to the petitioners, suddenly they came to know that all the 4 brothers had colluded with each other and fraudulently registered the partition deed dated 14.07.2020 registered as Document No.1932/2020 by suppressing the two legal heirs viz., the petitioners. According to the petitioners, the four brothers have fraudulently taken an extent of 67.5 cents each.

5.The petitioners further submits that the parent document for the property stands in the name of their father Nanjapannadi and after his demise, patta was issued including the six legal heirs.



6.The petitioner submits that the Registrar without verifying the right of the executants and their right over the property had registered the above said partition deed in favour of their brothers, they had produced the patta No.318 which clearly reflects the six legal heirs. According to the petitioners, this registration is a fraudulent and the same has to be cancelled.

7.The petitioners submits that the Inspector General of Registration had issued a circular vide No.18339/C1/2012 dated 25.04.2012 wherein, it has been clearly stated that the Sub-Registrars to verify the previous original documents/patta and other revenue records to ascertain the right over the property by the persons who executed the documents and to prevent the bogus or fraudulent registration of documents, following instructions are reiterated for strict adherence in letter and spirits, the relevant paragraph is extracted hereunder:

“(B) In case previous documents are not available as the property may be ancestral, the executants should produce records such as Patta copy issued by the Revenue Department and Tax receipt in original along with attested/notarized xerox copies to prove that the properties are owned by them, The Registering Officer should verify the original and return them to the party concerned and preserve the attested xerox copy as part of the document by scanning and numbering it.”

8.According to the petitioners, the second respondent has failed to follow the said circular and the four brothers fraudulently left out the petitioners and they have also taken the petitioners share also and they executed a partition deed and the same has been registered on 14.07.2020. According to the petitioners, they have sent a detailed representation dated 22.07.2021 to the respondents as well to other authorities to cancel the partition deed dated 14.07.2020 registered as Document No.1932 of 2020 before the SRO, Uthukuli. But, till date, the same was not considered by the respondents.

9.According to the petitioners, the District Registrar/the first respondent has got the power to conduct enquiry under Section 68(2) of the Registration Act and cancel the document which was fraudulently registered by their brothers.



10.The petitioners have no other alternative remedy except to approach this Court under Article 226 of the Constitution of India. Hence, the writ petition filed.

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11.The learned Government Advocate for the respondents would submit that the second respondent will conduct an enquiry and pass appropriate orders.

12.Heard learned counsel for the petitioners and the learned Government Advocate for the respondents and perused the materials available on record.

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13.On going through the averments, it is seen that Nanjapannadi had wife and 6 children as his legal heirs and after his demise, his wife Nachammal was also died on 08.04.2017 leaving behind the daughters and sons. It is submitted that the revenue records viz., A-register and patta were mutated and included the names of the six legal heirs. It is alleged that the four brothers fraudulently registered the partition deed without giving the shares to the petitioners

14.In view of the above, this Court is of the considered view that only the District Registrar/ the first respondent has got the power to conduct an enquiry under Section 68(2) of the Registration Act and to cancel the fraudulent registration, whereas the Sub-Registrar has no power. Hence, the first respondent is directed to conduct an enquiry under Section 68(2) of the Registration Act after giving sufficient opportunities to all the six legal heirs concerned and pass appropriate orders in accordance with law, within a period of four months from the date of receipt of a copy of this order.

15.With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The District Registrar,
In the Cadre of
Assistant Inspector General of Registration,
Door No.1/3, Vignesh Complex,
Ground Floor, P.N.Road,
Tirupur District - 641 602.

2.The Sub-Registrar,
Sub-Registrar Office Uthukuli,
South Veedhi, Nearby Police Station,
Uthukuli, Tirupur District - 638 751.

+1cc to the Government Pleader SR.No.44888

W.P.No.18209 of 2021

PCH(CO)
RVM(21/10/2021)