



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P. No.20187 of 2021

S. Manivasakam

...Petitioner

-Vs-

- 1.The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate, Chennai - 600 028.
- 2.The District Registrar,
Integrated Registrar's Office Campus,
Kacheri Road, Kallakurichi - 606 202.
3. The Joint Sub-Registrar-II,
Integrated Registrar's Office Campus,
Katcheri Road, Kallakurichi District -606 202.
4. The Joint Sub-Registrar,
O/o. The Sub Registrar's Office,
Chinnasalem, Kallakurichi District - 606 201.
4. Mrs. Valarmathy,
5. Minor Roshan,
6. A.T. Sakeer,
7. P. Kathirvel

...Respondents

PRAYER: This Petition is filed under Article 226 of the Constitution of India, praying for the issue a Writ of Mandamus, directing the 1st Respondent to consider the petitioner's representation dated 16.07.2021 and pass appropriate orders cancelling the Rectification deed dated 07.05.2020 registered as document No.1328 of 2020 on the file of the Joint Sub-Registrar-II/3rd respondent herein, and the sale deed in document No.246/2021 dated 18.01.2021 on the file of the Joint Sub-Registrar, Chinnasalem, Kallakurichi/4th Respondent herein and the Sale Deeds under Document Nos.240, 245 and 253 of 2021 dated 25.01.2021 registered in the office of Joint Sub-Registrar-II, Kallakurichi /3rd respondent herein and the sale deed under documents Nos.945 and 946 of 2021 dated 03.03.2021 registered under the Joint Sub-Registrar-II, Kallakurichi/3rd respondent herein.

For Petitioner :: Mr. V. Sanjay



For Respondents 1-4 :: Mr.V. Veluchamy
(Government Advocate)
For Respondents-5-8 :: No Appearance

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O R D E R

The relief sought for in this writ petition is for a direction to the the 1st Respondent to consider the petitioner's representation dated 16.07.2021 and pass appropriate orders cancelling the Rectification deed dated 07.05.2020 registered as document No.1328 of 2020 on the file of the Joint Sub-Registrar-II/3rd respondent herein, and the sale deed in document No.246/2021 dated 18.01.2021 on the file of the Joint Sub-Registrar, Chinnasalem, Kallakurichi/4th Respondent herein and the Sale Deeds under Document Nos.240, 245 and 253 of 2021 dated 25.01.2021 registered in the office of Joint Sub-Registrar-II, Kallakurichi /3rd respondent herein and the sale deed under documents Nos.945 and 946 of 2021 dated 03.03.2021 registered under the Joint Sub-Registrar-II, Kallakurichi/3rd respondent herein and pass orders accordingly.

2. The learned counsel for the petitioner would submit that the properties of land in Survey Nos.204/1, 222/1, 345/7, 346/8 measuring to the extent of 1.15.0 Hecs and house site in Survey No.539/10, 538/12 measuring 23 cents in Alathur Village, Sankarapuram Taluk, were executed by way of a registered Will dated 16.12.1998 in favour of the petitioner and his brother namely Mr. S. Mohan by their maternal grand father's elder brother Thiru. E.Villiyapillai S/o. Elliyappillai. The said Will was registered on the file of the Joint Sub-Registrar-II, Kallakurichi in Document No.56/1998 in Book-III, dated 16.12.1998. After the demise of the said Villiyapillai on 04.01.2006, the petitioner and his brother became the joint owners of the property. Patta was also issued jointly in their names and both of them are in common enjoyment of the properties covered under the said Will dated 16.12.1998. While being so, in the interregnum, without knowledge and consent of the petitioner, the petitioner's brother had executed a Will dated 18.02.2020 in respect of his half share of the properties covered under the Will dated 16.12.1998, in favour of his Minor son namely Roshan and appointed Mrs. Valarmathi as guardian and registered the same before the Joint Sub-Registrar-II, Kallakurichi, in Document No.11 of 2020 in Book-III, dated 18.02.2020. On the same day, the petitioner's brother had also executed a sale deed for the common 40 cents of land out of 0.36 Hec (0.90 Acre) in Survey No.222/1, in favour of one A.T. Sakeer, S/o. A.T. Ali on the file of the Joint Sub-Registrar-II, Kallakurichi in Document No.636 of 2020 in Book-I. The aforesaid documents have been executed using the death



certificate of their Grand Father Thiru. E. Velliyapillai, S/o. Elliyappillai which has been issued by Taluk Legal Service Committee.

3. It has further been submitted that on 28.02.2020, the petitioner's brother passed away. Now, the 5th respondent namely, Mrs. Valarmathi claiming to be the Wife of brother of the petitioner obtained a legal heirship certificate on 10.03.2020 issued by Tahsildar, Sankarapuram Taluk wherein 5th respondent and 6th respondent were shown as the legal heirs being Wife and Son respectively. The said legal heirship was challenged by the petitioner herein before the 2nd respondent herein by way of Revision Petition dated 25.09.2020. After hearing both sides, the District Collector, Kallakurichi, passed an order dated 09.04.2021 in Na.Ka.G1/4699/2021 thereby setting aside the said legal heirship certificate and held that the 5th respondent is not the legally wedded wife of the brother of the petitioner. Under such circumstances, the 5th respondent by using the said legal heirship certificate, executed a Rectification Deed dated 07.05.2020 for herself and for minor Roshan in favour of the 7th respondent namely, A.T. Sakeer, on the file of the Joint Sub-Registrar-II, Kallakurichi in Document No.1328 of 2020 rectifying the sale deed dated 18.02.2020, which was originally executed by the petitioner's brother in favour of the 5th respondent for the common 40 cents of land out of 0.36.5 Hec (0.90 Acre) in S. No.222/1, Alathur Village, Kallakurichi Taluk. But, 5th respondent under the Rectification Deed dated 07.05.2020 amended the schedule of property in the sale deed dated 18.02.2020 as "common southern side 0.40 cents" instead of "common 0.40 cents". Subsequently, the Patta in respect of the property was changed in the name of the 7th respondent after sub-divided as 222/1B. As the aforesaid property is a common undivided property, the 5th respondent cannot have any right to register a rectification deed for the sale deed executed by the brother of the petitioner. The Joint Sub-Registrar-II, without even verifying the records with regard to the ownership of the property and other particulars had mechanically registered the rectification deed while the 5th respondent is not competent to execute the said document as she is not the legally wedded wife of brother of the petitioner. Further, the said property being an undivided property for both the petitioner and his brother, the 5th respondent has no right to execute the rectification deed by amending the schedule of property. The Rectification Deed was executed only for the purpose of cheating the petitioner herein. After coming to know about the illegal registration of the aforesaid rectification deed, the petitioner has sent a representation to the 2nd respondent on 02.07.2020 requesting to cancel the aforesaid documents registered by his brother and 5th respondent herein. Based on the representation dated 02.07.2020, the 2nd respondent



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conducted an enquiry and passed an order dated 22.03.2021 holding that the 5th respondent has no right to execute the Rectification Deed dated 07.05.2020 and also directed the 3rd respondent not to register any documents based on the said rectification deed and the petitioner to approach the Civil Court seeking appropriate relief since there is no provision to cancel the said document. Hence, the petitioner and his sisters have filed a suit in O.S. No.119 of 2020 on the file of the District Court, Kallakurichi seeking for the reliefs of their pre-emptive right to purchase the undivided "A" schedule property and declaration that the sale deed dated 18.02.2020 in document No.636 of 2020 registered on the file of the Joint Sub-Registrar-II, Kallakurichi as null and void and for other reliefs which is still pending.

4. It has been further submitted that during the pendency of the enquiry before the 2nd respondent, at the instance of the 5th respondent, the 7th respondent herein had executed a Sale Deed dated 18.01.2021 in Document No.246 of 2021 on the file of the Sub-Registrar, Chinna Salem in respect of the said property covered under the Rectification Deed, in favour of the 8th respondent namely Mr. P. Kathirvel. The said sale deed was registered on the basis of the Rectification Deed and the Patta was obtained in the name of the 7th respondent. It is pertinent to note that the previous documents were registered before the Joint Sub-Registrar-II, Kallakurichi and the Sale Deed dated 18.01.2021 in Document No.246 of 2021 was registered before the Sub-Registrar, Chinna Salem/4th respondent herein. The 4th respondent without conducting any proper enquiry before registering the Sale Deed dated 18.01.2021, registered the same merely because one of the property covered under the said sale deed is situated within the jurisdiction of the 4th respondent herein. The 4th respondent ought not to have registered the document especially during the pendency of the enquiry before the 2nd respondent with regard to the rectification deed.

5. The learned counsel for the petitioner further submitted that pursuant to the aforesaid Sale Deed dated 18.01.2021, the 8th respondent executed five sale deeds to five persons in respect of the said property under documents No.240, 245, 253 of 2021 dated 25.01.2021 and Document No.945 and 946 of 2021 dated 03.03.2021 on the file of the Joint Sub-Registrar-II, Kallakurichi.

6. It has been further submitted that the respondents 5, 7 and 8 have colluded together and executed the aforesaid Five Sale Deeds in favour of different persons by taking advantage of the unlawful rectification deed which is totally illegal and the said documents are liable to be cancelled by the respondents 1 and 2. In this regard, the petitioner herein has sent a



detailed representation on 16.07.2021 to the 1st respondent herein requesting him to cancel the illegally registered rectification deed and other documents followed by the rectification deed. However, there is no action taken on the aforesaid representation made by the petitioner herein. Therefore, the petitioner is left with no other alternative and efficacious remedy except to approach this Court by invoking its extraordinary jurisdiction under Article 226 of Constitution of India . Hence, this Petition.

7. The learned Government Advocate appearing for the respondents 1 to 4 would submit that the various documents have been registered for the property which belonged to brother of the petitioner even after legal heirs certificate obtained by the 5th respondent was under challenge and cancelled by the District Collector, Kallakurichi. Hence, the respondents may be directed to conduct the enquiry in this regard after verifying the entire documents and calling upon the parties concerned and pass orders accordingly.

8. Heard, the learned counsel for the petitioner and the learned Government Advocate for the respondents 1 to 4 as well as perused the material available on record.

9. Having considered the aforesaid facts and circumstances of the case and submissions made by the learned counsel for the petitioner and the learned Government Advocate for the respondents 1 to 4, without going into the merits of the case, the respondents 1 to 4 are directed to conduct the enquiry over this matter after calling upon the parties concerned along with relevant documents relied by them and consider the representation dated 16.07.2021 made by the petitioner herein and pass appropriate orders in accordance with law within a period of Six months from the date of receipt of copy of this order after affording sufficient opportunity to the petitioner herein.

10. With the aforesaid directions, the Writ petition stands disposed of accordingly. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar



Lbm

Copy to:

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1. The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate,
Chennai - 600 028.
2. The District Registrar,
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3. The Joint Sub-Registrar-II,
Integrated Registrar's Office Campus,
Katcheri Road, Kallakurichi District -606 201.
4. The Joint Sub-Registrar,
O/o. The Sub Registrar's Office,
Chinnasalem,
Kallakurichi District - 606 201.

+1 CC to Mr. Sanjay, Advocate sr 48882.

+1 CC to The Government Pleader sr 49444.

W.P. No.20187 of 2021

MG(CO)
SP(22/10/2021)