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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.NO.19419 OF 2020

&

WMP NO.24006 OF 2020

Dr.Subbha Somu

... Petitioner

Vs.

1. The Inspector General of Registration,
Registration Department,
Government of Tamilnadu
No.100, Santhome High Road,
Chennai - 600 028

2. K.Vanisree

... Respondents

Writ Petition is filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 23.10.2020 passed by the 1st respondent under reference 6448/U2/2020 and to quash the same and to consequently direct the Sub-Registrar, Kodambakkam to delete the entry relating to refusal of registration made in Register - Book-II maintained u/s 51 of the Registration Act with regard to the above property.

For Petitioner : Mr.R.Umasuthan

For Respondents : Mr.K.M.D.Muhilan for R1
Government Advocate

Mr.M.S.Krishnan
Sr.Advocate for R2 for
Mr.G.Mohanakrishnan



O R D E R

The present Writ Petition is filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 23.10.2020 passed by the 1st respondent under reference 6448/U2/2020 and to quash the same and to consequently direct the Sub-Registrar, Kodambakkam to delete the entry relating to refusal of registration made in Register - Book-II maintained u/s 51 of the Registration Act with regard to the above property.

2. The brief facts of the case, as alleged by the petitioner, is as follows:-

2.1. The petitioner and his nephew, namely, Sivasubramanian are the joint owners, of the immovable property being vacant land measuring an extent of 9090 sq.ft., comprised in S.Nos.9/1 and 9/3, T.S.No.5/3, Block No.7, Vada Agaram Village, Egmore, Nungambakkam Taluk and obtained the said property by way of a sale deed dated 21.12.2018, registered as Doc.No.4908 of 2018 before the office of SRO, Kodambakkam from one Iqbal for the sale consideration of Rs.4 Crores and patta was also obtained in the name of the petitioner as well as Iqbal.

2.2. On receipt of the said property, the petitioner obtained Sanction letter dated 31.10.2019 from Indian Oil Corporation Limited for starting IOCL retail outlet. Further, the petitioner claims title in the following manner:-

(i) Initially, the larger extent of land was originally possessed by Lakshmi Ammal alias Shenbagalakshmi. The said Shenbagalakshmi settled an extent of 6 grounds and 532 sq.Ft., comprised in S.Nos.9/1 Part and 9/3 Part, Vada Agaram Village, Egmore, Nungambakkam Taluk in favour of her son, Ramalingam. The said Ramalingam created mortgage over the land measuring an extent of 9090 Sq.Ft., in the said survey numbers in favour of Arunachalam Pillai vide deed of conditional mortgage dated 14.09.1973 registered as Doc.No.6009 of 1973 before the SRO, Kodambakkam. On account of default committed by the said Ramalingam to repay the mortgage debt, Arunachalam Pillai assigned the mortgage in favour of Prema kumari and



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Chandranathan vide deed of assignment dated 11.03.1980 and on account of the same, Prema Kumari and Chandranathan took possession as the assignees of the conditional mortgage by M.Arunachalam. Thereafter, vide settlement dated 20.05.2010 registered as Doc.No.11753 of 2010 before the SRO, Kodambakkam, Premakumari settled her 50% share in and over the said property in favour of Chandranathan and the said Chandranathan, obtained patta in respect of the vacant land measuring 9090 sq.ft., in S.Nos.9/1 and 9/3 [T.S.No.5/3]. In consequent, vide sale deed dated 12.08.2010 registered as doc.No.2751 of 2010, the said Chandranathan sold the property in favour of Iqbal. When the said Iqbal was taking measures to put up a construction, the 2nd respondent objected to the same by submitting that she has got interest in the said property.

(ii) The said Iqbal filed O.S.No.13218 of 2010 on 03.11.2010 against the 2nd respondent and obtained an order of injunction, restraining the 2nd respondent from interfering his ownership. Based on the instigation of the 2nd respondent, the mortgagor, Ramalingam, who had lost his right of redemption over the said property filed O.S.No.391 of 2011 to declare the sale deed dated 12.08.2010 executed by Chandranathan in favour of Iqbal as null and void and the said Ramalingam has filed FIR in Crime No.257 of 2011 for the offence of land grabbing. This Court in CrI.O.P.No.24991 of 2011 has quashed the said FIR. In the meanwhile, the 2nd respondent also filed C.S.No194 of 2011 against the petitioner seeking for the relief of injunction restraining the petitioner from interfering the subject mentioned property and the suit filed by the 2nd respondent in C.S.No.194 of 2011 was dismissed for non-prosecution on 17.11.2016. After the said dismissal and quashing of the FIR in CrI.O.P.No.24991 of 2011 on 15.12.2011, the said Iqbal sold 9090 sq.ft., in S.Nos.9/1 and 9/3, T.S.No.5/3 in favour of the petitioner vide sale deed dated 21.12.2018 registered as Doc.No.4908 of 2018 and the petitioner has also obtained patta on 19.01.2019.

3. It is also the case of the petitioner that the 2nd respondent claims ownership measuring an extent of 9102 sq.ft., in S.Nos.8/1, 8/2, T.S.No.5/1 of Vada Agaram Village, Egmore-Nungambakkam and she traces her title in the following manner:

The 2nd respondent claims that the larger extent of land measuring 20 grounds and 1206 sq.ft., comprised in S.Nos.8/1 &



8/2, Vada Agaram Village was originally owned and possessed by one Yarlagada Venkanna Chaudry and he acquired the same under the sale deed dated 30.09.1946 registered as Doc.No.3086 of 1946 from one Shah Shiva Raj Manchalal. In terms of partition deed dated 17.03.1956 entered into between Yarlagada Venkanna Chaudry on one part and his brother, namely, Yarlagada Renganayakulu on the other part, the said property was allotted to Yarlagada Venkanna Chaudry. By way of sale deed dated 30.09.1962, registered as Doc.No.2685 of 1962, the said Yarlagada Venkanna Chaudry along with his brother and son sold an extent of 5 grounds and 2111 sq.ft., in favour of D.Padmini. The 2nd respondent claims to have acquired the property measuring an extent of 9102 sq.ft., in S.No.8/1 part and 8/2 part, Vada Agaram Village, by way of dissolution of Partnership, M/s Vani Enterprises dated 23.04.991. The said Padmini has sold the remaining lands to the other persons.

4. Further, the petitioner states that the immovable property in which the 2nd respondent is claiming title is different from the petitioner's property. When the petitioner was about to commence IOCL Retail Outlet in the said property, the 2nd respondent herein lodged a complaint under Sections 82 and 83 of the Registration Act, 1908 with the 1st respondent on 13.02.2020 alleging that the writ petitioner herein is attempting to trespass into her property. On receipt of the complaint, the 1st respondent had called the petitioner, 2nd respondent, Iqbal, Premakumari and Chandranathan for enquiry, by way of a impugned notice dated 09.07.2020. As against the said notice issued by the 1st respondent, the petitioner filed W.P.No.10123 of 2020 for issuance of Writ of Certiorari for quashing the said notice. By order dated 04.08.2020, this Court disposed of the same by directing to issue fresh notice and observed that the 1st respondent does not have power to cancel the registered instruments under Sections 82 and 83 of the Registration Act, 1908 and enquiry was directed to be conducted within the statutory powers of the 1st respondent. In consequent, the 1st respondent issued fresh notice to the petitioner and conducted enquiry on 08.09.2020 and 19.10.2020. Except the petitioner and the 2nd respondent, none [viz., Chandranathan, Premakumari, S.Iqbal] participated in the enquiry. The 2nd respondent did not support her contention / complaint as to how she is claiming title to the immovable property belonging to the writ petitioner in S.Nos.9/1, 9/3,



T.S.No.5/3, Block No.7, Vada Agaram Village, Egmore, Nungambakkam Taluk.

5. Subsequently, the 1st respondent conducted the enquiry with a pre-determined state of disposition in total disregard to the directions of this Court in W.P.No.10123 of 2020 dated 04.08.2020 and vide impugned order dated 23.10.2020 under reference 6448/U2/2020, the 1st respondent held that (a) Deed of Settlement dated 20.05.2010, registered as Doc.No.1753 of 2010, (b) Deed of Rectification dated 08.06.2020 registered as Doc.No.1974 of 2010 (c) sale deed dated 12.08.2020, registered as Doc.No.2751 of 2010 (d) Agreement for sale dated 06.04.2016, registered as Doc.No.1434 of 2016 (e) Deed of cancellation of General Power of Attorney dated 13.02.2017, registered as Doc.No.519 of 2017 (f) Agreement of sale dated 13.02.2007, registered as Doc.No.521 of 2017 and (g) sale deed dated 21.12.2018, registered as Doc.No.4908 of 2018, all before SRO Kodambakkam are 'fabricated documents' and consequently directed the Sub-Registrar, Kodambakkam to record that the above documents had been admitted for registration 'mistakenly'. Further, the 1st respondent directed the 2nd respondent to approach the civil court for the relief of cancellation of the said documents. Being aggrieved over the said order, the petitioner is before this Court.

6. The learned counsel for the petitioner would submit that the immovable property belonging to the petitioner is covered under S.Nos.9/1 & 9/3, T.S.No.5/3, Block no.7, Vada Agaram Village and the 2nd respondent is claiming the immovable property in S.Nos.8/1, 8/2, T.S.No.5/1, Vada Agaram Village. In spite of the fact that the above properties are two different properties and without even scrutinizing the survey records pertaining to the said property, the 1st respondent herein passed the impugned order dated 23.10.2020 holding that the title documents of the petitioner and his predecessor in title are found to be fabricated and forged.

7. The learned counsel for the petitioner also submits that the Civil Suit in O.S.No.391 of 2010 is pending on the file of XV Assistant Judge, City Civil Court, Chennai and the said Ramalingam, erstwhile mortgagor, who has lost his right of redemption, is claiming ownership in respect of the vacant land measuring an extent of 9090 sq. ft., comprised in S.Nos.9/1 and



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9/3, T.S.No.5/3, Block No.7, Vada Agaram Village, Nungambakkam, which has been purchased by the petitioner under sale deed dated 21.12.2018 registered as Doc.No.4908 of 2018. Admittedly, when the civil suits are pending in O.S.No.13128 of 2010, O.S.No.391 of 2010 and 7913 of 2019 between the predecessor in title of the petitioner and the 2nd respondent herein, the impugned order dated 23.10.2020 passed by the 1st respondent is prima facie perverse and ex facie illegal. Hence the petitioner has come forward with this petition to quash the said impugned order.

8. The learned Government Advocate appearing on behalf of the 1st respondent has filed a detailed counter affidavit and submits that the 1st respondent has issued orders treating the documents as fraudulent documents only after hearing the petitioner and of his written arguments and the order is speaking one and clearly elicit the facts how the 1st respondent came to the conclusion that the sale deed in favour of the petitioner and the Rectification Deed No.1974 of 2010 are fraudulent documents.

9. Further, the learned Government Advocate for the 1st respondent contends that the petitioner's property and the 2nd respondent's property cannot be construed as different one. In order to create a cloud over the rights of the 2nd respondent, a fraudulent rectification deed no.1974 of 2010 was executed by enlarging the extent of the site without any authority and also by inclusion of the 2nd respondent's survey number 8/1B, so as to grab the property of the 2nd respondent.

10. That apart, the learned Government Advocate appearing for the 1st respondent submits that the town survey number 8/1B that belongs to the 2nd respondent and the said survey number was included in the TSLR extract only based on the fraudulent rectification deed no.1974 of 2010 which forms the basis of and parent document for all the succeeding documents 298/2012, 1434/2016, 519/2017, 521/2017 and leading to the document no.4908/2018, in which the petitioner is the purchaser. When the petitioner has admitted that the 2nd respondent is the owner of T.S.Nos.8/1, 8/2 and T.S.No.5/1, had cunningly got inclusion of S.No.8/1B that belonged to the 2nd respondent in the TSLR.

11. The learned Government Advocate appearing for the 1st respondent contends that while the suit is pending on the file



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of the learned VII Additional Judge, City Civil Court, Chennai filed by the 2nd respondent, the petitioner ought not to have registered the sale deed no.4908 of 2018. Mere mutation in the revenue records, local bodies etc., does not confer any title and the same is well settled by this Court as well as Hon'ble Apex Court, thereby pleaded to dismiss the petition.

12. In contrary to the contention of the petitioner, the learned counsel for the 2nd respondent has filed a detailed counter affidavit and submitted that the petitioner is not entitled to take shelter under the 'Bonafide Purchaser' especially when the Transfer of Property Act is clear that only the purchaser should be aware at the time of purchase of property. In fact, the Writ Petitioner, being lawyer himself, claims to have purchased the property along with one N.Sivasubramanian for a sum of Rs.4,00,00,000/- ought to have scrutinised the documents with regard to the property and enquired the legal records before the purchase of the property.

13. The learned counsel for the 2nd respondent proceeds to state that the 2nd respondent purchased the property comprised in S.No.8/1 and 8/2 situated at Vada Agaram village block 7 measuring an extent of 3 grounds and 1902 sq.ft., under a sale deed dated 16.09.1970 registered as Doc.No.2944/70, through her partnership firm, Vani Enterprises and patta was also obtained in her favour showing Old S.No.8/1B part and T.S.No.5/1 measuring an extent of 0.08.48.5 ares in the name of Vani Enterprises by the Tahsildar, Egmore-Nungambakkam Taluk, on 16.02.2000.

14. The learned counsel for the 2nd respondent submits that property of the 2nd respondent is based on the documents of title of his predecessor in title, which are registered as per the Registration Act. Further, the petitioner is pretending that he had come to knowledge about the legal proceedings between the said Iqbal and the 2nd respondent after the patta cancellation notice has been issued to him, as per the averments in W.P.No.7406 of 2020, now, in the instant proceedings, the petitioner had not averred that fact at all. In fact, any prudent purchaser would have verified and searched for any litigations that are pending and would have purchased the property only after proper verification of documents of title. The petitioner being a qualified lawyer, knowing fully well that



his predecessor have no registered instrument in their favour had claimed title through unregistered documents cannot now pretend as they are not aware about the legal disputes that are pending between the predecessor of the petitioner and the 2nd respondent. When the predecessor himself has based his title on unregistered instruments, the petitioner cannot presume to have perfected any title over the property in question.

15. Besides the above, the learned counsel for the 2nd respondent submitted that the petitioner refused to sign in the enquiry proceedings and mentioned that he will come along with his legal counsel to answer the queries put forth by the 1st respondent and would submit the relevant documents on or before 24.10.2020. In the meanwhile, without appearing in-person, the petitioner had sent a written reply dated 22.10.2020 to the 1st respondent without answering to any of the queries and explanations sought for by the 1st respondent. No documents were produced by the petitioner in support of his contentions. In addition, the petitioner claimed that his land comprised in S.Nos.9/1, 9/3 and T.S.No.5/3 measuring 9090 sq.ft., is different from the land of the 2nd respondent measuring 9102 sq.ft., comprised in S.Nos.8/1, Part 8/2 and T.S.No.5/1. In these circumstances, only after careful consideration of the materials on record, the 1st respondent concluded that 1753/2010, 1974/2010, 2751/2010, 298/2012, 1434/2016, 519/2017, 521/2017 and 4908/2018 were forged, fraudulent and fabricated with criminal intent to grab the land of the 2nd respondent, thereby pleaded to dismiss the said Writ Petition with costs.

16. Heard the learned counsel for the petitioner, learned Government Advocate for the 1st respondent and the learned counsel for the 2nd respondent and perused the documents placed on record.

17. On a perusal of the impugned order dated 23.10.2020 passed by the 1st respondent, it could be seen that the 2nd respondent, from Vani Enterprises, Partnership firm, on 16.09.1970 through document no.2944/1970, obtained the property, viz., Old S.No.8/1, 8/2 to an extent of 3 grounds 1902 sq. Ft., Further, right from the year 1946, the documents of the 2nd respondent are in sequence and the same are clear, i.e., transferring of title from one party to the other party and to the 2nd respondent. That apart, the petitioner in his written



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submissions dated 22.10.2020 has stated that the property of the 2nd respondent situated in S.Nos.8/1, 8/2 and T.S.No.5/1, and the property in Vada Agaram Village, S.No.9/1, 9/3 and T.S.No.5/3 are different, but the petitioner has failed to submit any reply with regard to the queries, viz., unregistered assignment deed, etc., put-forth by the SRO on 19.10.2020. Therefore, in order to grab the property of the 2nd respondent, situated at Vada Agaram Village, S.Nos.8/1, 8/2 and T.S.No.5/1, Document Nos.1753/2010, 1974/2010 and 2751/2010 were registered. In consequence, Doc.Nos.298/2012, 1434/2016, 519/2017, 521/2017 and 4908/2018 were also fraudulently registered.

Therefore, the 1st respondent came to the definite conclusion that the documents in 1753/2010, 1974/2010, 2751/2010, 298/2012, 1434/2016, 519/2017, 521/2017 and 4908/2018 were fraudulently registered and ordered to the Sub Registrar, Kodambakkam to cancel the said documents in Note-II, by stating that the said documents were registered 'mistakenly'. Since the Sub Registrar does not have the power to cancel those documents, the 2nd respondent was advised to approach the civil court and work out the remedy in the manner known to law.

18. It is to be noted that the 2nd respondent derives title of the property in S.Nos.8/1 and 8/2 from the year 1946. On an examination of the parent document, viz., Doc.No.3086 of 1946 dated 30.09.1946, it is noted that by way of deed of settlement, an extent of 20 grounds and 1203 sq.ft., in S.Nos.8/1 and 8/2 was derived by Yarllagada Venkanna Choudhary and Yarllagada ranganyakallu from Mr.Shah Sivaraj Manchalal and by way of partition deed dated 17.03.1956, each of them, viz., Yarllagada Venkanna Choudhary and Yarllagada ranganyakallu were allotted one half. In consequence, vide Doc.No.2685 of 1962, dated 30.09.1962, an extent of 5 grounds and 2111 sq.ft., was sold to Mrs.Padmini by Yarllagada Venkanna Choudhary. Out of the said acquired property, an extent of 3 grounds and 1902 sq.ft., in S.Nos.8/1 and 8/2 and T.S.No.5/1 [according to patta 8/1B part - 3 grounds and 1902 sq.ft.,] was sold to M/s Vani Enterprises, vide Doc.No.2944 of 1970 dated 16.09.1970. The said partnership firm was dissolved and the property measuring 3 grounds and 1902 sq.ft., was allotted in the name of Vanisree, 2nd respondent on 23.04.1991. Thereafter, vide W.D.D. D5 / D.A.No.35 184.2001 dated 20.02.2001, the Assistant Executive Engineer / T.P.III, Corporation of Madras, has issued a demolition order in provision of Section 264 (A)



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of MCMC Act for the demolition of the existing building. Subsequently, an agreement for development was entered between the 2nd respondent, 5 others and Ceebros Property Development Pvt., Ltd., on 17.09.2001.

19. It is relevant for this Court to make a significant mention that one Shenbagalakshmi, vide settlement deed, registered an extent of 6 grounds and 532 sq.ft in S.Nos.9/1 and 9/3 vide Doc.No.4497 of 1971 dated 08.11.1971 in favour of her 2nd son, viz., S.A.Ramalingam. The said Ramalingam vide Doc.No.6009 of 1973, on 14.09.1973, mortgaged the property only to an extent of 3 grounds in S.Nos.9/1 and 9/3 to one Arunachalam Pillai before the District Registrar Office, Madras -1 promising to redeem within a period of 14th March, 1974, but the said Ramalingam neither paid the interest or principal, is the contention of the petitioner, however, vide receipts dated 24.11.1980, 08.01.1983 and 02.09.1983, it is evident that the said Ramalingam had paid a sum of Rs.5,000/-; Rs.5,000/- and Rs.15,000/- as cash respectively, to the legal heirs of Arunachalam, since the said Arunachalam had died on 04.07.1980. That apart, an affidavit has also been filed by one Kumaresan, son of Arunachalam on behalf of wife, daughters and sons of Arunachalam stating that the "mortgage debt has been discharged on 14.01.1983 by paying a sum of Rs.15,000/-, but the documents (i) Mortgage Deed, Doc.No.6009/73 dated 01.10.1973 and (ii) Settlement deed document no.4497 dated 09.11.1971, SRO, Kodambakkam, deposited by the said Ramalingam with the late Arunachalam have not been traceable after the death of Arunachalam." The same was noted in the 'LOST COLUMN' in Deccan Herald on 14.11.1983.

20. Moreover, in the interregnum, on 11.03.1980, an unregistered Assignment deed was entered by the said Arunachalam in favour of Mrs.Prema kumari and Mrs.Chandranathan in S.Nos.9/1 and 9/3 to an extent of three grounds. Thereafter, on 20.05.2010, the said Prema kumari, by way of Deed of Settlement, vide document no.1753/2010 settled the property in S.Nos.9/1 and 9/3 measuring an extent of three grounds in favour of Chandranathan. Further, a Deed of Rectification was made by Mrs.Prema kumari in favour of Mrs.Chandranathan in S.Nos.9/1 and 9/3 to an extent of 3 grounds and 1890 sq.ft., vide Doc.No.1974 of 2010 dated 08.06.2010 and only at this point of time, the property of the 2nd respondent in S.Nos.8/1B and 5/1 was included without any title over it.



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21. That apart, in furtherance, vide Doc.No.2751 of 2010 dated 12.08.2010, a deed of Sale was executed by Mrs.Chandranathan by Power of attorney Farooq Sheriff and Tamim Ansari in favour of Iqbal through his power of attorney, Mohammed aziq for S.Nos.8/1B, 8/4, 9/1, 9/3 and T.S.No.5/1 part for 3 grounds and 1890 sq.ft., Besides the above, a deed of sale agreement, vide doc.no.1434 of 2016 dated 06.04.2016 was executed by Iqbal through his Power of attorney, Mohammed aziq in favour of the petitioner for S.Nos.8/1B, 8/4, 9/1, 9/3 and T.S.No.5/1 part 3 grounds and 1890 sq.ft. and deeds of sale agreements, vide Doc.No.521 of 2017 dated 13.02.2017 and Doc.No.4908 of 2018 dated 21.12.2018 were executed by Iqbal in favour of the petitioner for S.Nos.8/1B, 8/4, 9/1, 9/3 and T.S.No.5/1 part 3 grounds and 1890 sq.ft.,

22. Taking into consideration of the fact that the petitioner has not chosen to reply to the query posed by the 1st respondent, as to how the unregistered assignment deed dated 11.03.1980 was entered by Arunachalam in favour of Mrs.Prema Kumari and Chandranathan for S.Nos.9/1 and 9/3 for an extent of 3 grounds, further, the said Prema Kumari executed Deed of Settlement in Doc.No.1753 of 2010 dated 20.05.2010 in favour of Chandranatham for an extent of 3 grounds and physically measuring an extent of 9324 sq.ft., in S.No.9/1 and 9/3 and all of a sudden, within a span of 19 days, a deed of rectification, was executed by Prema kumari vide doc.No.1974 of 2010 dated 08.06.2010, in which, the said document rectifies the previous settlement deed no.1753 of 2010, the clauses that "the clause Lakshmi Ammal @ Shanbagalakshmi purchased the property from Mr.Raghavayya Venkatramana Choudhry", also rectifying '3 grounds and 1890 sq.ft.,' to that of 3 grounds and physically measuring an extent of 9324 sq.ft., and include S.No.8/1B" without any document or title whatsoever, this Court is of the opinion that the order passed by the 1st respondent under reference no.6448/U2/2020 dated 23.10.2020 is perfectly valid in the eye of the law and the same does not require any interference in the hands of this Court.

Hence in view of the above stated facts and circumstances and since it is well settled position of Law that the title of the property cannot be decided in the present Writ Petition and it can be decided only by the competent civil court, it is left open to the parties to work out the remedies before the



competent civil court to decide the title of the property. Accordingly, the present Writ Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

ssd

To

The Inspector General of Registration,
Registration Department,
Government of Tamilnadu
No.100, Santhome High Road,
Chennai - 600 028

+1cc to M/s.G.Mohanakrishnan, Advocate, S.R.No.55596

W.P.No.19419 of 2020

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