

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM : JUSTICE N.SESHASAYEE

W.P.No.19186 of 2020

G.Sivaraman

...

Petitioner

Vs.

1.The Sub Registrar
Valavanur
Villupuram District.

2.Jayalakshmi

...

Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in respect of his proceedings in Na.Ka.No.202/2020 dated 07.11.2020 sent by the first respondent on 18.11.2020 and quash the same and thereby direct the first respondent to receive and register the sale deed dated 06.09.2019 executed in favour of the petitioner in respect of the properties situate at Valavanur Village, Villupuram Taluk in S.No.290/3 out of 0.76.5 ares, 0.19.0 ares undivided half share therein and on registration of the same, direct the first respondent to release the same forthwith to the petitioner.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.T.M.Pappiah
Special Government Pleader [R1]

Mrs.Vasudha Thiagarajan
for Mr.K.Arvind for R2

ORDER

The present petition is filed seeking to quash the proceedings of the first respondent in Na.Ka.No.202/2020, dated 07.11.2020, and to direct him to receive and register the sale deed dated 06.09.2019 executed in favour of the petitioner as concerning his half share of property of 0.19.0 ares, out of 0.76.5 ares, in S.No.290/3 of Valavanur Village, Villupuram Taluk.

2. The brief narration of the facts goes as below:

- A certain Govinda Udayar owned an extent of his ancestral land, on whose demise, it was inherited by his two sons viz., Tamizharasan and Palani. It is to be stated that other than Tamizharan and Palani, Govinda Udayar had three daughters, of whom, the second respondent is one.
- The petitioner's father had purchased the property in dispute from the legal heirs of one Palani Vide sale agreement registered as Document No.2176/2019 dated 27.08.2019 on the file of the first respondent. Subsequently, a sale deed came to be executed on 06-09-2019. When it was presented for registration, the first respondent/the Sub Registrar, refused to entertain it on the ground that the other heirs of Govinda Udayar should join together to execute the sale deed in favour of the petitioner.
- The legal-heirship certificate dated 29.10.2010, produced at the time of effecting registration of sale agreement reflects the names of Tamizharasan and Palani as legal heirs of deceased Govindan.
- Be that as it may, on 16.09.2019, the second respondent herein is alleged to have filed a petition before the authority claiming that she too is a co-sharer of the said property, and that she has filed a suit in O.S.79/2020 on the file of Sub Court, Villupuram, for partition, where she claims 1/5th share in the property, and the same is pending.
- When the petitioner's vendors presented the document for registration on 12.11.2019, a refusal check slip was issued by the first respondent stating that two different legal heirs certificates were seen available on record, as concerning this property
- Challenging the same, the petitioner herein, as the legal heir of the purchaser, has preferred a writ petition before this Court in WP.No.33668/2019 and that came to be dismissed on the ground that it was pre-mature to decide the issue when the Sub Registrar was still considering the objection to registration preferred by the second respondent herein. Aggrieved which, he filed an appeal in W.A.441/2020 and this was disposed of by the Division Bench of this Court on 08.07.2020.
- Pursuant to the judgment in W.A.No.441/2020, the first respondent has passed the impugned proceedings dated 07.11.2020, informing that no decision can be taken on the

registration of the aforesaid property, as the suit in O.S.No.79/2020 is still pending.

3. The case of the petitioner appears to be that during the pendency of the suit in O.S.No.79/2020, in which the plaintiff / second respondent herein seeks 1/5th share in the property, the present petitioner seeks registration of the sale deed as regards ½ share.

4. Heard Mr.T.M.Pappiah, learned Special Government Pleader for the first respondent and Mrs.Vasudha Thiagarajan, learned counsel for Mr.K.Arvind, counsel for the second respondent.

5. Law does not prevent alienation of any property pendente lite or even prior to the suit, but in terms of Section 8 of the Transfer of Property Act, the transferee will have only the share which the transferor has. The learned counsel for the petitioner submitted that law being what it is, there cannot be any bar for any transfer pendente lite. Mere pendency of a suit cannot be a ground on which the registration can be denied. The Sub Registrar concerned cannot refuse transfer, subject to those covered under Sections 19,23 and 35 of the Registration Act. Here it is useful to extract paragraphs 21 to 24 of the judgement of the Division Bench of this Court in N.Ramayee Vs. Sub-Registrar [(2020) 8 MLJ 305]

"21. Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force, as per Section 7 of the Transfer of Property Act. The reading of the above section makes it very clear that even a person not entitled transferable property is competent to transfer such property when he was authorised to dispose of such property.

22. Section 41 of the Transfer of Property Act deals with the power of the ostensible owner to effect the transfer of the property with consent, express or implied of the real owner.

23. From the principle underlined in the Section 41 of the Transfer of Property Act is that the ostensible owner of the property, with the consent express or implied and representing himself as owner of the property though he is not having the title, can deal with the property. Similarly, Section 42 of T.P. Act deals with the transfer by a person having authority to

revoke the former transfer. When a person transfers any immovable property reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee subject to any condition attached to the exercise of the power as a revocation of the former transfer to the extent of the power.

24. Similarly, Section 43 of Transfer of Property Act deals with transfer by unauthorised person who subsequently acquires interest in the property transferred. The above section makes it very clear that even a person who has no title over the property purports to transfer to another by deed and when he subsequently acquires any interest in the property, sufficient to satisfy the transfer, the title would pass to the transferee without any further act on the part of the transferor, provided the transferee has not rescinded the transfer and opts for such effectuation. The above principle also makes it very clear even a transfer by unauthorised person is not prohibited. Only the validity of the title would be subject to his acquiring subsequent interest in the property."

6. The learned counsel for the second respondent very vehemently canvassed that the title document relied on by the vendor for effecting the sale is fraudulent, and hence no sale shall take place.

7. There is an option open to the second respondent to move the civil Court, where she has laid the suit for partition in O.S.No.79/2020 for obtaining appropriate interim orders, and this appears not to have been done. A pendency of a suit for partition, does not bar a co-sharer from alienating his/her share in the property. The only restriction is that such purchaser from a co-sharer cannot obtain physical possession of the share so purchased, but might have to either institute a suit for partition, or might participate in the very suit now pending in O.S.79/2019 and can work out the remedies.

8.1 In view of this, and for the reason stated in paragraph No.5 above, this Court may not prevent alienation of the property especially when the share transferred is only half share and it is not likely to affect the share which the second respondent claims in O.S.No.79/2020, even in the eventuality of she succeeding in the suit. And, if the parent documents of the petitioner are fraudulent, then that can be challenged in O.S.No.79/2020 before the civil Court, since neither this Court has jurisdiction under Article 226 of the Constitution, nor

procedure for registration within the scheme of Registration Act, enables deciding that issue. The extracted portion of the Ramayee judgement above may be referred to.

8.2 In fitness of things, as and when a sale deed is registered, the second respondent is well advised to implead the petitioner who is the purchaser in pending O.S.No.79/2020 to facilitate the Court to ascertain the legitimacy of the petitioner's right and the extent transacted. After all, if the sale deed in favour of the petitioner is valid, then all equities can be worked out in his presence, in the eventuality of the second respondent succeeding in the suit. Even if any ADR method is adopted by the trial Court, within the meaning of Section 89 of the CPC., still the petitioner would have to necessarily participate.

9. Accordingly, this petition is allowed in terms of what is indicated. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ds

To:

The Sub Registrar
Valavanur
Villupuram District.

+1cc to Mr.N.Suresh, Advocate, S.R.No.17664

+1cc to the Government Pleader, S.R.No.17735

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GPL (CO)
KM(27/04/2021)