

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM :
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.19598 of 2020

R.Mohanarangan

... Petitioner

Vs

1.The District Registrar
Kallakurichi District.

2.The Sub Registrar
Rishivandhiyam
Kallakurichi District.

3.Chandralekha

4.Senbagam

5.Minor Kishore

Rep.By his father Gurudevan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents 1 and 2 to conduct enquiry and cancel the entry of fraudulent settlement deed Doc.No.1900 of 2020 dated 29.09.2020 in the encumbrance certificate and initiate prosecution against the fraudulent persons.

For Petitioner : Mr.M.Nandha Kumar

For Respondents: Mr.B.Kannan

Government Advocate [R1 & R2]

WEB COPY
ORDER

The present petition is filed to direct the Sub Registrar, Rishivandhiyam, Kallakurichi District, the second respondent herein to hold an enquiry into the representation of the petitioner dated 29.10.2020 and to notify that the settlement deed dated 29.09.2020 is fraudulently made.

2. According to the petitioner, his paternal grandfather Aadhimoolam had left behind some properties and also some heirs which includes his widow, the grandmother of the petitioner. It is his further case that he has fractional right in the said property. However, his paternal grandmother

has joined hands with one of his paternal aunt and brought out a settlement deed in favour of the son of the said aunt. The said settlement deed deals with the entire properties, whereas the settlor, his grandmother as well as his aunt have fractional right in the said property.

3. Heard Mr.B.Kannan, learned Government Advocate for respondents 1 and 2.

4. The learned counsel for the petitioner submitted that the Sub Registrar appeared to have acted on the basis of the legal heir certificate issued by the Tahsildar, wherein only the paternal grandmother and paternal aunt were shown as heirs, whereas earlier to the said legal heir certificate, another legal heir certificate have been issued, where all the heirs have been noted. He brought to the notice of the Court the said certificates, the copies of which are enclosed in his typed set of papers.

5. There are two parts to the petitioner's arguments :

- (a) How the Sub Registrar might have been misled into registering the document?
- (b) The authority Sub Registrar to hold any enquiry for the purpose concerned.

6.1 So far as the first issue is concerned , it is not even the case of the petitioner that his paternal grandmother and aunt did not have right over the property in question. Section 8 of the Transfer of Property Act, provides that any document of conveyance will be operational only to the extent of right which the executant of the document is capable of disposing. Therefore, even if the statement of the petitioner has to be accepted, the settlement deed is valid with regard to the rights of the petitioner's grandmother and aunt. If the petitioner is certain that he has certain right over the property, then he would have to work out his remedy elsewhere.

6.2 Turning to the second part, even if this Court were to direct an enquiry under Section 82 r/w. 83 of the Registration Act, whatever be the outcome of the enquiry, is not going to be of any real effect as the same is not likely to bind the civil Court or criminal Court. It may be at the best be the relevant fact before any civil or criminal Court, but still it may not bind them.

7. This apart, if the allegation of the petitioner is scrutinised for its merit, admittedly there are two legal heir certificate, one of which may not disclose the entire materials. From the Sub Registrar's stand point, he may have acted bonafide, because the facts as stated itself seems to suggest his act may be bonafide. Yet again, no useful purpose might not serve by directing the Sub Registrar. The petitioner may now approach the appropriate authorities

including the civil Court or such other proceedings which he considers it desirable for obtaining such remedy, which he contemplates in the manner known to law, if only he is desirous. So far as the present case is concerned, this Court does not consider it necessary to direct the second respondent /Sub Registrar, Rishivandhiyam to hold an enquiry for the reasons already stated.

8. This petition is accordingly disposed of. No costs,

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ds

To:

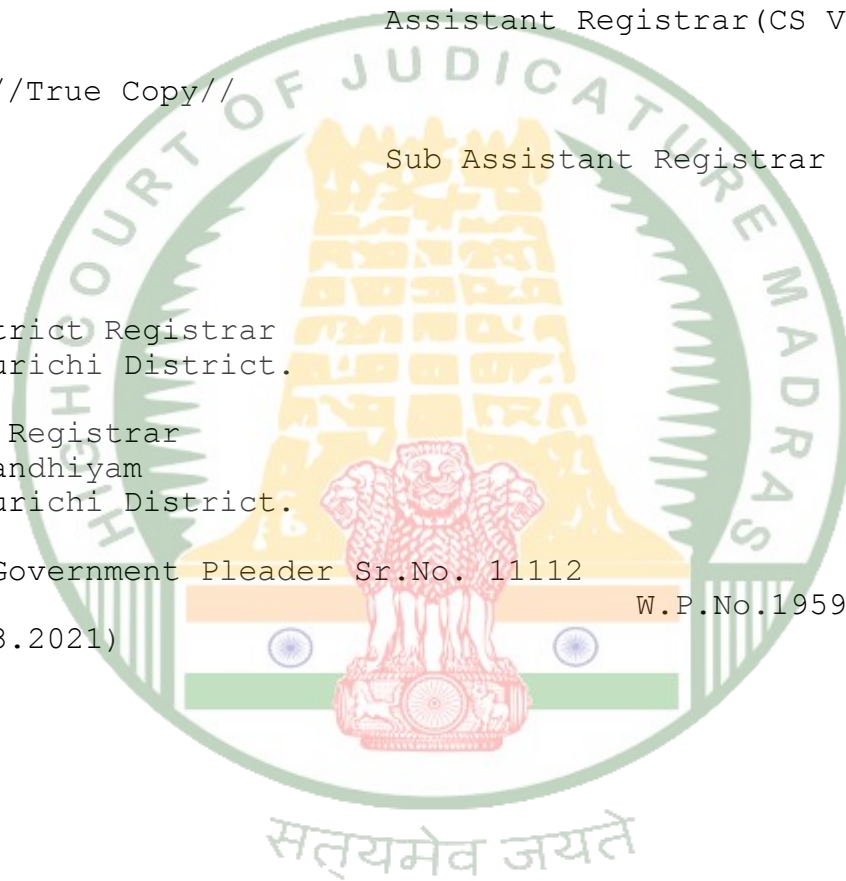
1.The District Registrar
Kallakurichi District.

2.The Sub Registrar
Rishivandhiyam
Kallakurichi District.

+1 cc to Government Pleader Sr.No. 11112

W.P.No.19598 of 2020

A.SK(19.03.2021)



WEB COPY