

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2021

PRONOUNCED ON : 17.04.2021

CORAM : Justice N.SESHASAYEE

W.P.Nos.27505, 24633 of 2019 and 11814 of 2020 and
W.M.P.Nos.26987, 26988, 26991, 24289 of 2019 & 14525 of 2020

- 1.M.Marie Emilie Soubachiny
..... Petitioner in W.P.No.27505 of 2019
- 1..Maria Susai
..... Petitioner in W.P.No.27505 of 2019
..... Petitioner in W.P.No.11814 of 2020
- 1.Boustamine
Rep. By his Power Agent Mrs.A.Kamala
... Sole Petitioner in W.P.No.24633 of 2019
- Vs.
- 1.The Inspector General of Registration
cum Secretary to Government,
Department of Revenue,
Secretariat, Puducherry.
- 2.The District Registrar
Puducherry Registration Department
Kamaraj Salai
Puducherry. Respondents 1 & 2 in W.P.No.27505/2019
..... 3rd Respondent in W.P.No.24633/2019
..... 1st Respondent in W.P.No.11814/2020
- 3.The Sub Registrar,
Office of the Sub Registrar,
Villianur,
Puducherry 605 110. 3rd Respondent in W.P.No.27505/2019
..... 4th Respondent in W.P.No.24633/2019
..... 2nd Respondent in W.P.No.11814/2020
- 4.The Tahsildar,
Villianur Taluk,
Puducherry. 4th Respondent in W.P.No.27505/2019
- 5.Mr.Boustamine
6.Mr.Safioudine

7.Rashitha Begam
8.Rashid Ahamed @ Salt
9.Raja Mohamadhu
10.Regina Begam
11.Abdul Majid
12.Mohamed Anas
13.Padurudeen
14.Basheer Saqueel Hameedu
15.Ubaidur Rahman
16.Mohamadhu Kabir
17.Seerajudin
18.Jamila Beevi
19.Rabiadul Bashiria
20.Thahira
21.Abdul Ravooob
22.Farooq @ Sait
23.Regina Begam
24.Baridha Begam
25.Salama Beevi
26.Mumtaj Begam
27.Seenuvasamoorthi Reddiar
28.A.Kamala ... Respondents 5 to 28 in W.P.No.27505/2019

29.The Union of India,
Rep by the Secretary,
Department of Revenue and Disaster Management,
Chief Secretariat, Puducherry.
..... 1st Respondent in W.P.No.24633/2019

30.The District Collector-cum-Special Secretary (Revenue),
Vazhudavoor Road, Puducherry 605 009.
..... 2nd Respondent in W.P.No.24633/2019

31.Maria Susai 5th Respondent in W.P.No.24633/2019

32.Marie Emilie Soubachiny 6th Respondent in W.P.No.24633/2019

Prayer in W.P.No.27505 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus, directing the respondents to consider the petitioner's representation dated 08.07.2019 and further direct the respondents to cancel the document Numbers 11559/2019, 11561/2019, 11564/2019 and document No.892/19/B4, registered on the file of the third respondent on 26.06.2019.

Prayer in W.P.No.24633 of 2019: Writ Petition filed under

Article 226 of the Constitution of India, to issue a writ of mandamus, forbearing the respondents 1 to 4 from registering any document in respect of the property comprised in R.S.No.29, 36/6 and 30/2 and situated at Ariyur Village, Puducherry presented by the 5th and 6th respondents in contrary to the judgment and decree passed in O.S.No.188 of 2015 on the file of Principal Sub Court, Puducherry.

Prayer in W.P.No.11814 of 2020: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus, to directing the second respondent to register and return the documents received by in receipts No.122863 and 122864 both dated 26.07.2019 in pending registers No.359 of 2019 and No.357 of 2019 respectively.

W.P.No.27505 of 2019

For Petitioners : Mr.A.Gouthaman

For Respondents : Mr.D.Ravichander,
Additional Govt Pleader(P) for R1 to R4

W.P.No.24633 of 2019

For Petitioner : Mrs.Hema Sampath, Senior Counsel
for Mr.K.Sasindran

For Respondents : Mr.D.Ravichander
Additional Govt Pleader (P) for R1 to R4

W.P.No.11814 of 2020

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.D.Ravichander
Additional Govt Pleader (P) for R1 to R4

COMMON ORDER

These writ petitions have been filed seeking the following prayers:

(i) to issue a writ of mandamus, directing the respondents to consider the petitioner's representation dated 08.07.2019 and further direct the respondents to cancel the document Numbers 11559/2019, 11561/2019, 11564/2019 and document No.892/19/B4, registered on the file of the third respondent on 26.06.2019.

(ii) to issue a writ of mandamus, forbearing the respondents 1 to 4 from registering any document in respect of the property comprised in R.S.No.29, 36/6 and 30/2 and situated at Ariyur Village, Puducherry presented by the 5th and 6th respondents in contrary to the judgment and decree passed in O.S.No.188 of 2015 on the file of Principal Sub Court, Puducherry.

(iii) to issue a writ of mandamus, to direct the

second respondent to register and return the documents received by in receipts No.122863 and 122864 both dated 26.07.2019 in pending registers No.359 of 2019 and No.357 of 2019 respectively.

2. The facts in nutshell are stated as follows:

- There is a dispute over a block of 8.12.0 hectares between Boustamine (the petitioner in WP.24633 of 2019) on one side, and Marie Emilie Soubachiny and her husband Maria Susai on the other side. According to Marie Emilie Soubachiny and her husband Maria Susai, this block of land originally belonged to one Jyothy who traced her title to it through a sale deed dated 21.08.1941. Jyothy executed a deed of Power of Attorney dated 20.02.2002, appointing and constituting one Siddharthan as her power of attorney. This power of attorney was not registered. On the strength of the power of attorney, Siddharthan executed separate sale deeds on 08.03.2002 and 11.03.2002. The first of the sale deeds was executed in the name of Marie Emilie Soubachiny and her husband Maria Susai, whereas the second of the sale deeds was executed in the name of Marie Emilie Soubachiny alone. These both sale deeds were executed by Siddharthan in his capacity as a power of attorney of Jyothy and was presented before the concerned Sub-Registrar for registration, and they were duly registered.
- Subsequently, when faced with some obstructions to their title to the property that they had purchased, both Marie Emilie Soubachiny and Maria Susai joined together and instituted O.S.No.188 of 2015 before the Principal Sub Court, Puducherry against Boustamine. The suit was laid for declaration of title and for other ancillary reliefs. Boustamine offered his contest to the suit. During trial, both the sides had produced the relevant title documents under which they claimed their independent title to the said property. After evaluating the evidences before it, the trial court dismissed the suit Vide its judgment dated 19.03.2019. In particular, it held in paragraph 19 of its judgment, that in terms of their title documents, the property under which Marie Emilie Soubachiny and her husband claim title, and the one over which Boustamine claim title are different. However, it proceeded to dismiss the suit on the solitary ground that the power of attorney which Jyothy had executed in favour of Sidharthan was not registered.
- This decree of the trial Court was promptly registered by Boustamine before the Sub Registrar. Subsequently, the following events took place:
 - (i) On 03.06.2019, two sets of documents came to be

executed. The first one was a release deed stated to have been executed by the co-sharers of Boustamine whereunder they released their respective shares in the aforesaid property to Boustamine and his cousin Safiudin. On the same day, both Boustamine and his cousin entered into a deed of partition and it was also registered. In this, A-schedule property (which is the bone of contest in O.S.No.188 of 2015) was allotted to the share of Boustamine.

- (ii) On 04.06.2019, both Boustamine and his cousin (parties to the partition deed dated 03.06.2019) executed a sale agreement in favour of one Sreenivasamurthy. On the same day, they also nominated one Kamala and another as their power of attorney.
- (iii) Be that as it may, on 12.06.2019, Marie Emilie Soubachiny and her husband Maria Susai, the defeated plaintiffs in O.S.No.188 of 2015 preferred a first appeal in A.S.No.5 of 2020 before the Third Additional District Court, Puducherry. It is in this background, Marie Emilie Soubachiny and Maria Susai had obtained what is styled as consent deeds, both dated 25.07.2019, from the original title holder Jyothy, whereunder she had ratified the sale deeds executed by her power of attorney on 08.03.2002 and 11.03.2002 in favour of these parties. When this was sought to be presented for registration with the Sub Registrar concerned, he declined to register it because there was an objection pending before him from Boustamine. Now Boustamine would approach this Court in W.P.No.24633 of 2019 for a writ of mandamus, forbearing the Sub Registrar concerned from registering any document presented before him against the judgment of the Civil Court in O.S.No.188 of 2015. In this, this Court has passed an order of interim injunction on 26.08.2019.
- (iv) Aggrieved by the refusal to register the consent deeds of Jyothy, Maria Susai has filed W.P.No.11814 of 2020 for a direction against the Sub Registrar to register the consent deeds. Marie Emilie Soubachiny on her part has filed W.P.No.27505 of 2019, again for a direction to the same Registrar in authority to cancel all the documents involving Boustamine or his family members, which has indicated earlier, were

executed on 03.06.2019 and 04.06.2019, subsequent to the dismissal of O.S.No.188 of 2015 and before the institution of A.S.No.5 of 2020.

3. Opening the argument for Boustamine, Mrs. Hema Sampath, the learned Senior Counsel took this Court through the facts, and submitted that when a civil first appeal is still pending, it is inappropriate to let the defeated plaintiffs to register the alleged consent deeds executed by Jyothy. That will alter the initial status quo which provided the cause for action in the suit, more so because the plaintiffs were unsuccessful in the pursuit to have the title declared by the Civil Court. She also submitted that before the trial Court, none of the original documents were produced by the plaintiffs.

4. Mr.V.Raghavachari, arguing for Marie Emilie Soubachiny and Maria Susai submitted that:

(a) In O.S.No.188 of 2015, the trial Court has not held that Boustamine was entitled to the block of land over which Marie Emilie Soubachiny and Maria Susai were claiming title. Indeed, after analysing the evidence before it, the trial Court had entered a categorical finding that the title documents based on which both the sides assert right, do not deal with the same property but different properties. In other words, that trial Court has dismissed the suit not because Boustamine, the defendant before it, had a better title to the same property than Marie Emilie Soubachiny and Maria Susai, but on the ground that the power of attorney document on the basis of which the plaintiffs in the suit, obtained title was not registered.

(b) On the point on which the trial court had non-suited the plaintiffs, it allowed it to be led by an interpretative misconception of Section 32 and 33 of the Registration Act. When the documents are executed and presented for registration by a power of attorney, then, the said power of attorney need not be registered. This is covered under Section 32 (1) (a). Only when a document is executed by one person but is presented for registration through the power of attorney, then such power of attorney requires registration as contemplated under Section 32 (1) (c) of the Act. So far as the present case is concerned, it falls squarely under Section 32 (1) (a), and the trial Court has fallen in error in telescoping Sec.32 (1) (c) into a situation covered under Section 32(1) (a).

(c) The scenario being what it is, now Jyothy, the title holder of the property has executed certain consent documents whereunder she has ratified all the acts of the power of attorney, and also the sale deeds executed by him, and this

registration was refused by him essentially because there was an order of injunction operating against him. However, the said order of injunction passed by the Court in W.P.No.24633 of 2019 is only against Marie Emilie Soubachiny and Maria Susai and not against Jyothy, presenting the consent documents which is in no way amounts to fresh conveyance by Marie Emilie Soubachiny or Maria Susai.

5. Mr.D.Ravichander, learned Additional Government Pleader for Union Territory of Puducherry, would argue that the Sub Registrar is barred by the order of injunction and even if the letter of the order may not mention anything about Jyothy, the spirit of the order implies that nothing be done contrary to the said order. He also stated that when a larger issue as to the interpretation of Section 32 (1) (a) or Section 32 (1)(c) is pending resolution before the First Appellate Court, the Sub Registrar, in all fairness has waited for the outcome of the litigation.

6. On the point as to whether Section 32 (1) (a) and 32 (1) (c) will apply to the fact-situation before the First Appellate Court is concerned, this Court consciously refrains from making an opinion on the same, since it does not want to preempt a conclusion which the First Appellate Court ought to take. This now leaves for consideration whether the consent deeds executed by Jyothy in favour of the Marie Emilie Soubachiny and Maria Susai must be registered.

7. Sec.18(f) of the Registration Act is a residuary provision that enables registration of every document of every kind that do not fall under Sec.17. Therefore, the consent deeds executed by Jyothy is registrable and hence the Sub Registrar cannot refuse registration.

8. However, what has now obstructed the Sub Registrar from registering these consent deeds of Jyothy? It is an order of interim injunction passed by this Court in W.P.24633/2019. The Registering Authority would be soon relieved of this concern, as this petition is being considered for final disposal now.

9. The point is not so much about whether the consent deeds of Jyothy can be registered, but it is about Boustamine's right to obstruct registration. It is an indisputable fact that O.S.188/2015 filed by Marie Emilie Soubachiny and Maria Susai has been dismissed. However, as was argued by Thiru.V.Raghavachari, the suit was not dismissed because Boustamine had a better title to the property which Marie Emilie Soubachiny and her husband Maria Susai had purchased, but on a legal issue as to whether the power of attorney executed by

Jyothy must be registered. To state it differently, the point was whether non-registration of the said power of attorney will have the effect of non-conveyance of title to Marie Emilie Soubachiny and Maria Susai? While this is sub judice, and is pending the decision of the learned Additional District Judge, yet, even if it were presumed to be a legally sustainable position, then the title to the property in question would continue to rest with Jyothy. It is either Marie Emilie Soubachiny and Maria Susai or Jyothy, and not Boustamine as yet. Is it not then necessary for Boustamine to demonstrate before this Court his locus standi to raise and sustain an objection to the intended registration of the consent deeds of Jyothi, other than relying exclusively on the solitary fact that O.S.188/2015 has been dismissed. Here, his efforts are found wanting both in quality and content. There is still a larger issue. That pertains to the authority of the registration authority to go into the question of title even if one is raised before him. Law on this is firmed up well to declare that a Registering Authority does not have the authority to investigate the title, and his power of enquiry prior to registration of the document is limited to Sec.34 and 35 of the Registration Act.

10.1 The conclusion is to state the obvious. W.P. 27505 of 2019 is filed jointly by Marie Emilie and Maria Susai for cancelling the documents executed within the family of Boustamine. This pertains to title. And, its legal consequence is tagged to the outcome of A.S.No.5/2020 between the parties. The first appellate court being the final court of facts, will have the opportunity to go into all questions and will now decide. Consequently, this is not decided and is closed. Turning to W.P.24633 of 2019, filed by Boustamine, it is dismissed.

10.2 This leaves W.P. 11814 of 2020, and it is allowed, and the Sub Registrar is now required to register the consent deeds, both dated 25.07.2019, within two weeks from the date of receipt of copy of this Order. It is clarified that this Order is restricted to registering the consent deeds of Jyothi, and not to its legal effect. That might have to be considered in the pending first appeal. No costs. Consequently, all the connected miscellaneous petitions and all the petitions are closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

gsk/ds

To

1.The Inspector General of Registration cum Secretary to
Government,
Department of Revenue,
Secretariat,
Puducherry.

2.The District Registrar,
Puducherry.

3.The Sub Registrar,
Office of the Sub Registrar,
Villianur,
Puducherry 605 110.

4.The Tahsildar,
Villianur Taluk,
Puducherry.

5.The Secretary,
The Union of India,
Department of Revenue and Disaster Management,
Chief Secretariat, Puducherry.

6.The District Collector-cum-Special Secretary (Revenue),
Vazhudavoor Road,
Puducherry 605 009.

7.The Principal,
Sub Court, Puducherry.

+3cc to Mr.K.Sasindran, Advocate, S.R.No.23440

+2cc to Mr.A.Gouthaman, Advocate, S.R.No.23631, 23633

+1 cc to Mr.V.Raghavachari, Advocate Sr.No.23244

+1cc to the Government Pleader, S.R.No.24095 (Puducherry)

Pre-delivery order in
W.P.Nos.27505, 24633 of 2019 & 11814 of 2020 and
W.M.P.Nos.26987, 26988, 26991, 24289 of 2019 & 14525 of 2020

JP(CO)
CB(03/06/2021)