



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.11.2021
CORAM

THE HONOURABLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.31113 of 2019
and
W.M.P.No.31236 of 2019

1. Chinnaponnu
2. Ganesan
3. Elumalai
4. Arumugam

... Petitioners

Vs

1. The Joint Sub Registrar No.1,
Villupuram.
2. Geetha
3. Baskar

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in his proceedings relating to registration of the Document bearing document No.3486/2019 dated 04.11.2019 on the file of the 1st respondent and quash the same. (Prayer amended as per order dated 02.03.2020 made in W.M.P.No.34194/2019 in W.P.No.31113/2019)

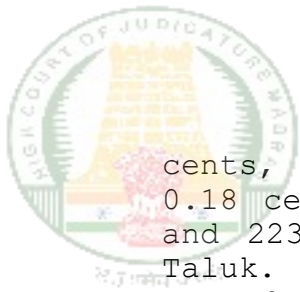
For Petitioners : Mr.N.Suresh

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader (for R1)
: Ms.R.Poornima (for R2 & R3)

O R D E R

This Writ Petition is filed to issue a Writ of Certiorari, calling for the records of the 1st respondent in his proceedings relating to registration of the Document bearing document No.3486 of 2019 dated 04.11.2019 on the file of the 1st respondent and quash the same.

2. The case of the petitioners is that the they owned the properties in Survey Dry Nos.91A/1C-0.12 cents, 91A/1D-0.14



cents, 91A/2B-0.12 cents, 91A/2C-0.10 cents and Wet S.No.223/3-0.18 cents, 223/4-0.09 cents, 223/5-0.01 cents, 226/-0.18 cents and 223/1-0.12 cents, situated at Salamedu Village, Villupuram Taluk. They executed Power of Attorney Deed in favour of the second respondent herein dated 13.07.1992, registered vide Document No.51 of 1992 on the file of the first respondent herein. The said Power of Attorney Deed is not a power coupled with interest. It only authorizes the second respondent to do certain acts on behalf of the petitioners for the purpose of executing the sale deed, etc. Since the second respondent acted against the interest of the petitioners, the petitioners executed the cancellation of Power of Attorney Deed on 31.03.1993. It was registered as Document No.33 of 1993 on the file of the first respondent. However, it was challenged by the second respondent in O.S.No.31 of 2002 on the file of the District Munsif Court, Villupuram and decree was obtained by the judgment and decree dated 05.08.2003. Though it was an ex-parte decree, the set aside petition was filed along with delay, which was dismissed. Therefore, again, the petitioners have executed another cancellation deed on 27.03.2008, registered vide Document No.132 of 2008 on the file of the first respondent herein. It was not challenged by the second respondent and it became valid and the second respondent herein has no authority to deal with the subject properties on behalf of the petitioners herein. However, the second respondent herein executed a sale deed in favour of the third respondent who is none other than the own son of the second respondent, after execution of cancellation of Power Attorney Deed dated 27.03.2008. The said sale deed was presented for registration on the file of the first respondent herein. The said sale deed was kept pending as Pending Document No.P4 of 2012. Therefore, the third respondent filed a Writ Petition through his father before this Court in W.P.No.7346 of 2013 for a direction to direct the first respondent to return the sale deed dated 05.03.2012. This Court, by order dated 18.02.2016, in the said Writ Petition, directed the first respondent to conduct enquiry by affording opportunity of personal hearing to the petitioners as well as the second and third respondents and pass appropriate orders within a period of six weeks from the date of receipt of a copy of that order.

3. In the meanwhile, the petitioners also challenged the execution of sale deed in O.S.No.308 of 2013 on the file of the Sub Court, Villupuram and it is pending. While pending the said suit and while pending the document for registration as Pending Document No.P4 of 2012 on the file of the first respondent herein, the petitioners filed the present Writ Petition initially for the prayer forbearing the first respondent from registering the Pending Document No.P4 of 2012, dated 05.03.2012 executed by the second respondent in favour of the third



respondent. After numbering the present Writ Petition and before listing the matter for admission, the first respondent registered the document in Document No.3486 of 2019, dated 04.11.2019 and released the same in favour of the third respondent. Therefore, the petitioners filed a petition before this Court for amending the prayer in the present Writ Petition challenging the proceedings relating to the registration of the document bearing Document No.3486 of 2019 dated 04.11.2019 on the file of the first respondent herein.

4. The learned counsel for the petitioners submitted that provisions under Section 34 of the Registration Act are mandatory for the first respondent before registration of any document. It mandates that the enquiry is to be conducted by the Registering Officer during the registration process and the said provision provides a complete mode for enquiry before the first respondent relating to registration of documents. Section 34(3) (c) of the Registration Act provides that the Registering Officer will have to enquire as to whether any person is appearing as an representative, assign or agent and satisfy himself as to the right of such person and direct him to appear. For better appreciation, it is useful to extract Section 34(3) (c) of the Registration Act, 1908, as follows:-

"34. Enquiry before registration by
registering officer:-....

(3) The registering officer shall thereupon

-

(c) in the case of any person appearing as a
representative, assign or agent, satisfy himself of
the right of such person so to appear."

5. Therefore, without following any procedures laid down in Section 34 of the Registration Act. According to the petitioner, the first respondent is violating the direction issued by this Court in W.P.No.7346 of 2013 dated 18.02.2016, the first respondent registered the sale deed, vide Document No.3486 of 2019.

6. The learned counsel appearing for the respondents 2 and 3 by filing counter affidavit, submitted that the petitioners unilaterally cancelled the Power of Attorney executed in favour of the second respondent and as such, it was challenged by way of suit in O.S.No.31 of 2002 as stated above and the cancellation of Power of Attorney Deed was declared as null and void by the judgment and decree in the said suit, dated 05.08.2003 on the file of the District Munsif Court Villupuram. It had become final, since their application to set aside the ex-parte decree was dismissed. Again, the petitioners executed another cancellation of Power of Attorney Deed and the same was also registered on the file of the first respondent without the



knowledge of the second respondent herein. Therefore, the second respondent executed the sale deed in favour of the third respondent as per the Power of Attorney executed in favour of the second respondent. The said sale deed was challenged by the petitioners in O.S.No.308 of 2013 on the file of the Principal Sub Court, Villupuram and it is pending. The petitioners also failed to obtain any interim injunction in the said O.S.No.308 of 2013 and have approached this Court for the very same relief. Therefore, the present Writ Petition is not maintainable and it is liable to be dismissed.

7. The learned Special Government Pleader appearing for the first respondent submitted that, as directed by this Court in W.P.No.7346 of 2013 dated 18.02.2016, the first respondent had registered vide Document No.3486 of 2019 dated 04.11.2019.

8. On a perusal of the records, it reveals that the petitioners filed a suit in O.S.No.308 of 2013 on the file of the Principal Sub Court, Villupuram District challenging the very execution of the sale deed itself by the second respondent in favour of the third respondent, whereas, the present Writ Petition has been filed with initial prayer to forbear the first respondent from registering the Pending Document No.P4/2012 dated 05.03.2012. While pending the present Writ Petition, the first respondent conducted enquiry as directed by this Court in W.P.No.7346 of 2013, registered vide document No.3486 of 2019. Therefore, the petitioners amended the prayer in the present Writ Petition challenging the registration of the document bearing Document No.3486/2019 dated 04.11.2019. The petitioners are the original owners and they executed Power of Attorney in favour of the second respondent to deal with the subject property. However, the petitioners do not want to continue the second respondent as their Power Agent and cancelled the Power of Attorney executed in favour of the second respondent. It was challenged and cancelled by the judgment and decree in O.S.No.31 of 2002. However, again the petitioners had cancelled the Power of Attorney Deed, registered vide Document No.131 of 2008 dated 27.03.2008, there is no bar for the petitioners to execute the cancellation of Power of Attorney. That apart, as directed by this Court in W.P.No.7346 of 2013, dated 18.02.2016, the first respondent issued summons dated 18.04.2016 to the petitioners to conduct enquiry for the enquiry to be held on 29.04.2016. Thereafter, the first respondent failed to pass any order except registration of sale deed dated 04.11.2019, vide Document No.3486 of 2019. Therefore, the impugned registration cannot be sustained and it is liable to be set aside.

9. In view of the above discussion, the impugned order dated 04.11.2019 is hereby quashed. It is made clear that the first respondent is directed to keep the sale deed dated 05.03.2012 as



Pending Document No.P4/2012 till the disposal of the suit filed by the petitioners in O.S.No.308 of 2013 on the file of the Principal Sub Court, Villupuram.

10. In the result, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

kv
To

The Joint Sub Registrar No.1,
Villupuram.

Copy to :
The Principal Sub Court, Villupuram.

+1 cc to Mr.Ms.R.Poornima, Advocate Sr.NO.58602
+1 cc to Mr.N.Suresh, Advocate Sr.NO.58564
+1 cc to Government Pleader Sr.NO. 59014

W.P.No.31113 of 2019

GPL(CO)
A.SK(09.12.2021)