



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.9166 of 2021

WEB COPY

P.Thangavel

... Petitioner

Vs.

1.The Sub Registrar,
Kariyapatti Sub Registrar Office,
Kariyapatti,
Virudhunagar District.

2.Veena

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned receipt of the 1st respondent in Aa.Thi.Mu. Dated 08.01.2021 and quash the same by directing the 1st respondent to register the deed of General Power of attorney executed by the petitioner in favour of the 2nd respondent in Temporary Document No.TP/99083873/2021, dated 08.01.2021, within time frame fixed by this Court.

For Petitioner : Mr.I.Abrar MD Abdullah

For Respondents : Mr.M.Lingadurai for R1
Government Advocate

ORDER

This writ petition has been filed challenging the impugned receipt of the first respondent, dated 08.01.2021 and for a direction to the first respondent to register the power of attorney executed by the petitioner in favour of the second respondent, on 08.01.2021.

2.The case of the petitioner is that the subject properties belonged to his father and he executed a registered Will in favour of the petitioner, on 10.08.2009, which was registered as document No.26/2009. The further case of the petitioner is that his father expired, on 10.12.2009 and thereafter, the properties devolved upon the petitioner.

3.The petitioner wanted to execute a power of attorney in favour of the second respondent to manage the property. The



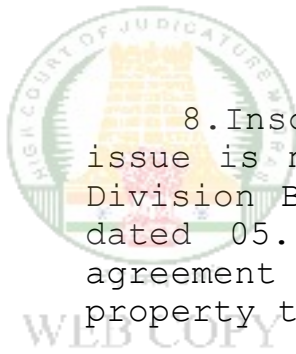
second respondent is the wife of the petitioner. The power of attorney was presented for registration before the first respondent, on 08.01.2021. The first respondent through the impugned receipt refused to register the power of attorney on the ground that there is no sufficient title document available to prove the title of the predecessor in interest with respect to the subject properties. Aggrieved by the same, the present writ petition has been filed before this Court, seeking for appropriate directions.

4.Heard Mr.I.Abrar MD Abdullah, learned counsel appearing for the petitioner and Mr.M.Lingadurai, learned Government Advocate appearing for the first respondent.

5.A careful reading of the registered Will that was executed by the father of the petitioner shows that there are two sources through which he had claimed title over the subject properties. The first source was by virtue of family arrangement, dated 13.03.2002 and the second source was by virtue of inheriting the same from his wife, who had purchased the property through a registered sale deed registered through document No.3450/1994. On the demise of the father, the property devolved upon the petitioner by virtue of the registered Will, dated 10.08.2009.

6.The learned Government Advocate based on the written instructions received from the first respondent submitted that even the revenue records does not stand in the name of the father of the petitioner and there is no explanation with regard to the source from which the title is traced. The learned counsel further submitted that there was an earlier registered agreement of sale that was executed and the same is also reflected in the encumbrance certificate and therefore, the first respondent had refused to register the power of attorney executed by the petitioner.

7.In the considered view of this Court, the first respondent is not vested with the power to test the title of the executant of the document. The first respondent has to necessarily go by the derivation of title made in the relevant document. In the Will that was executed in favour of the petitioner, there is sufficient description and explanation as to how the father of the petitioner became the owner of the subject properties. The same satisfies the requirements and it is not necessary for the first respondent to go beyond what was stated in the Will. Just because the name of the father of the petitioner was not reflected in the patta that cannot be a ground for the first respondent to refuse to register the power of attorney that was executed by the petitioner in favour of his wife, who is the second respondent herein.



8.Insofar as the earlier agreement of sale is concerned, the issue is no longer *res-integra* and it is squarely covered by the Division Bench Judgment of this Court in W.P.(MD).No.674 of 2020, dated 05.11.2020. This Court has categorically held that an agreement of sale by itself will not be a bar to the owner of the property to deal with his property.

9.In view of the above discussion, this Court is inclined to interfere with the impugned receipt issued by the first respondent, on 08.01.2021 and the same is hereby quashed. There shall be a direction to the first respondent to entertain the power of attorney document executed by the petitioner in favour of the second respondent and register the same, if it is otherwise in order and the necessary stamp duty and registration charges are paid.

10.This writ petition is allowed with the above directions. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

1.The Sub Registrar,
Kariyapatti Sub Registrar Office,
Kariyapatti,
Virudhunagar District.

+1 CC to M/s.SPL GP (SR-21526[F] dated 07/07/2021)

Order made in
W.P. (MD) .No.9166 of 2021

05.07.2021

CN(12.07.2021) 3P 3C