



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. [MD]No.1303 of 2021

and

C.M.P. [MD]Nos.5448 & 5449 of 2021

P.Vijayakumar

...Appellant/3rd Respondent

Vs.

1. A.Antony Joseph
2. The Sub-Registrar,
Valliyoore,
Tirunelveli.

...1st Respondent/Writ Petitioner

3.P.Rathi Pushpam

... Respondents 2&3/Respondents 1&2

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to set aside the order passed in W.P.[MD]No.10377 of 2021 dated 21.06.2021 passed by this Hon'ble Court and allow this Writ Appeal.

Prayer in WP(MD). 10377/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ or Order or Direction more in the nature WRIT OF MANDAMUS directing the 1st respondent to release the original sale deed registered before the 1st respondent in pending document No.4/2021 dated 10.06.2021 to the petitioner within the time fixed by this Hon'ble Court and thus render justice.

For Appellant	: Mr.P.M.Vishnuvarthanan
For Respondent No.1	: Mr.H.Arumugam
For Respondent No.2	: Mr.A.K.Manickam
	Standing Counsel for Govt.
For Respondent No.3	: Mr.K.K.Udhayakumar

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.P.M.Vishnuvarthanan, learned Counsel appearing for the appellant, Mr.H.Arumugam, learned Counsel appearing for the first respondent, Mr.A.K.Manickam, learned Standing Counsel for Government appearing for the second respondent and Mr.K.K.Udhayakumar, learned Counsel appearing for the third respondent.



2.This appeal by the third respondent in the writ petition is directed against the order dated 21.06.2021 in W.P.[MD]No.10377 of 2021.

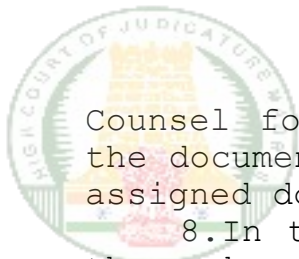
3.The writ petition was filed by the first respondent herein, praying for a direction upon the second respondent Sub-Registrar, Valliyoor, Tirunelveli, to release the original sale deed registered before him in pending Document No.4 of 2021 dated 10.06.2021, within a time frame.

4.The learned Writ Court has disposed of the writ petition without notice to the appellant and without hearing the appellant. It appears that the writ petition was disposed of at the admission stage itself.

5.Learned Counsel appearing for the first respondent / writ petitioner submitted that the Court has not issued any positive direction, but it has directed that the Sub-Registrar shall take into consideration the findings of the Court in the writ petition and shall register the sale deed dated 10.06.2021, if it is otherwise in order and the necessary stamp duty and the registration charges have been paid.

6.On a perusal of the impugned order, we find that the learned Writ Court was convinced with the case of the first respondent / writ petitioner by taking note of the decision of the Hon'ble Division Bench in the case of **N.Ramayee Vs. Sub Registrar, Registration Department, Valapady, Salem District reported in 2020 5 LW 385**. After taking note of the said decision, in paragraph No.5, the learned Writ Court holds that the enquiry which is proposed to be conducted by the Sub-Registrar itself would be a fait accompli. After making such observation, direction has been issued. Therefore, we find that the direction issued is not an innocuous direction, but directing him to proceed in the manner as stated / observed in the impugned order, in our considered view, could not have been done without notice to the appellant and without hearing the appellant.

7.The learned Counsel appearing for the first respondent / writ petitioner would submit that the decision of the Hon'ble Division Bench in **N.Ramayee** case [referred supra] is binding on the Sub-Registrar. No doubt, decisions of Court are binding on the authorities who are functioning within the territorial jurisdiction of the High Court. Nevertheless, the party to the proceedings can always take a stand that the decision is distinguishable on facts or cannot be applied to his case. Therefore, when the Sub-Registrar who functions under the provisions of the Registration Act and the Rules framed thereunder, is entitled to conduct an enquiry after objection is given on registration of a document, he should be permitted to act according to the power, unless such power exercised is wholly without jurisdiction or tainted with malafide or outcome of arbitrariness. Nothing as stated is alleged except to state that civil proceedings are pending and the Sub-Registrar is not justified in retaining the document after signing the document. The learned



Counsel for the first respondent / writ petitioner submitted that the document has already been accepted for registration and has been assigned document No.1692 of 2021 and not released.

8. In the light of the above, we are inclined to interfere with the order passed in the writ petition. Accordingly, the Writ Appeal is allowed and the impugned order is quashed and the matter is remitted to the Sub-Registrar to conduct an enquiry on the objection filed by the appellant dated 12.06.2021, after issuing notice to the appellant, the first and third respondents and the legal heirs of one Thomas, afford an opportunity of personal hearing to the aforementioned persons or their authorised representatives. After taking note of the objections and the submissions that may be made during the enquiry and the documents that may be produced by either side, the Sub-Registrar shall pass a speaking order on merits and in accordance with law. This direction be complied with within a period of six [6] weeks from the date of receipt of a copy of this judgment. It is needless to state that the authorities shall extend cooperation and the appellant should also respond to the notice issued by the Sub-Registrar and promptly and effectively participate in the enquiry.

9. Accordingly, the Writ Appeal stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

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.

To

The Sub-Registrar,
Valliyoore,
Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-21318[F] dated 06/07/2021)

+1 CC to M/s.P.M.VISHNUVARTANAN, Advocate (SR-21314[F] dated 06/07/2021)

+1 CC to M/s.SPL GP (SR-21557[F] dated 07/07/2021)

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