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W.P.(MD)No.10981 of 2021
Habiba v. The Sub Registrar

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 06.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD)No.10981 of 2021
and WMP (MD) No.8615/2021
(Through Video Conferencing)

M.Habiba

... Petitioner

Vs.

The Sub Registrar
Melapalayam
Tirunelveli

... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the respondent in Na.Ka.No.59/2021 dated 18.02.2021 and quash the same and consequently direct the respondent to issue certified copy of Doc.No.9450 of 2008 dated 13.10.2008 registered on the file of respondent to the petitioner within the time fixed by this Court.

For Petitioner	:Mr.H.Arumugam
For Respondents	:Mr.R.Suresh Kumar
	Government Advocate

ORDER

This writ petition has been filed challenging the impugned proceedings of the respondent dated 18.02.2021 and for a consequential direction to the respondent to issue a certified copy of the pending document No.9450/2008 dated 13.10.2008.

2. The case of the petitioner is that she purchased the subject property for a valid consideration by virtue of a sale deed dated 13.10.2008. When the document was presented for registration, the same was kept as a pending document on the ground that the property has been undervalued. Admittedly, the proceedings are pending before the concerned authority.

3. It is stated that one P.Shankar, who had no right or title over the property, filed a suit in O.S.No.537/17 before the Principal District Munsif Court, Tirunelveli against one R.Sankaralingam and sought for the relief of permanent injunction. While filing the suit, Shankar has also included the subject property as one of the items in the schedule of property. The suit



came to be decreed and the petitioner was not even a party in the said suit. The decree passed on 03.10.2019 by the Principal District Munsif was also registered on the file of the respondent.

4. The petitioner immediately took steps to get a certified copy of the sale deed executed in her favour and made an application before the respondents. The said application was rejected by the respondent through the impugned proceedings dated 18.02.2021 on the ground that the certified copy of the document cannot be issued, since proceedings are pending under section 47(A)(1) of the Indian Stamp Act (hereinafter referred to as 'the Act'). Aggrieved by the same, the present writ petition has been filed before this Court.

5. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

6. The only issue that requires consideration in the present writ petition is as to whether the petitioner will be entitled to seek for the certified copy of the sale deed, which is pending before the concerned authority under Section 47(A)(1) of the Act. This issue is no longer res integra and this Court has passed various orders directing the issuance of the certified copy of documents, which are pending enquiry under Section 47(A) of the Act. One such order was passed in W.P.Nos.18212 and 19482/2018 dated 24.04.2019. The relevant portions in the order are extracted hereunder:

"14. In this background, the petitioner counsel relied on an unreported judgment of Madurai Bench of Madras High Court dated 18.04.2018 made in **W.P. (MD) . No.8242 of 2018 (S.M.Raman ..vs.. The District Registrar)** on a similar circumstances, where the Sub Registrar was directed to return the documents to the petitioner therein within a period of two weeks from the date of receipt of copy of the order with necessary endorsement that the proceedings under Section 47-A of Indian Stamp Act have been contemplated and initiated.

15. Per contra, the learned counsel for the respondent relied upon the judgment reported in **2017 (6) CTC 449 (Special Deputy Collector (Stamps), Palayamkottai, Tirunelveli District and another v. Alfred and others)** wherein, in a batch of cases, Hon'ble Division Bench of this Court has held that such power of returning the document without complying the necessary mandatory conditions under Section 47-A, the Registrar has got no duty cast upon them to return the document.

16. I heard the arguments and perused the documents



filed and guided by the case reported in **2017 (6) CTC 449** **cited supra** wherein in para-25 and 28, it is held as follows:-

"25. Though, payment of duty is one thing and release of the document is the other thing, both are intertwined with each other. The enactment merely provides for registration, notwithstanding the issue pertaining to undervaluation. The said factor cannot be extended for the release of the document in the absence of any provision. To that extent, there is no conflict between the two enactments. With the above said understanding of the provisions of the two enactments, let us go into the contentions raised.

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27.

28. As discussed above, there is no question of return of the instrument by the registering authority, if a reference is made along with the instrument. In the absence of any provisions enabling the return of the instruments, the same cannot be given back. The provision for creating charge cannot be construed for an automatic release of the document. Even if we apply the principle of purposive and reasonable interpretation, the instrument cannot be released until and unless the duty determined is set aside or found to be wrong. In the light of discussions made above, we are of the view that the contentions raised by the learned counsel for the writ petitioners cannot be accepted."

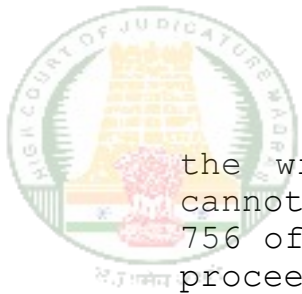
17. In the above judgment, it is categorically made clear that the document cannot be released until the proceedings under Section 47-A are concluded. This Court is of the affirmative view to the submissions made by the Government Pleader Murugan, who appeared on behalf of the respondents. When that being the position of law, I am unable to accept the argument put forth by the learned counsel for the writ petitioner. Hence, the prayer made in W.P.(MD).No.19482 of 2018 cannot be granted and deserves to be dismissed.

18. With regard to the argument of the learned



counsel for the petitioner in W.P.(MD) No.18212 of 2018 that once a document registered is pending before the authorities under Section 47-A proceedings or for any other reasons before the registering authority, it becomes a public document, no doubt, the Hon'ble Division Bench of this Court in the case reported in **2017 (6) CTC 449 cited supra** has negated the claim of returning the original title deed when the same is pending before the authorities under Section 47-A(1). However, the return of original title deed is different from obtaining or issuing a certified copy of the document pending proceedings under Section 47-A(1). There is no bar either under the Stamp Act nor under the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968, for issuance of certified copy of the document pending scrutiny under Section 47-A(1). As far as the claim made by the petitioner in W.P.(MD).No.18212 of 2018, I am unable to accept the contention raised by the learned Government Advocate for the respondents that since the original deed is pending adjudication before the first respondent under Section 47-A(1) for undervaluation and deficit stamp duty paid by the petitioner, the certified copy cannot be issued. This Court is of the view that the pendency under Section 47-A(1) of the title deed pending adjudication is totally different from issuing a certified copy of the document. The Statute does not differentiate the certified copy sought to be issued by the registering authorities that with those documents pending under Section 47-A(1). Nowhere in the Statute neither under the Stamp Act nor under the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968, provide any such embargo. When such is the position, this Court is of the view that the writ petitioner is entitled to receive a certified copy of the document registered before the second respondent.

19. The argument putforth by the learned counsel for the proposed impleading petitioners 5 and 6, namely, Pangajam and Pakkirisamy is not convincing to this Court as the factual matrix raised by the impleading petitioners cannot be gone into under Article 226 of the Constitution of India as the impleading petitioners have raised certain issue of fraud committed on them by the writ petitioner, the impleading petitioners necessarily need to approach the appropriate forum (civil court) for their redressal. Though the impleading petitioners claim that they are interested parties in the Writ Petitions, the prayer sought for in the Writ Petition has got no nexus to the allegations made by the impleading petitioners as against



the writ petitioner, as such, the impleading petitions cannot be entertained. Hence, the WMP (MD) Nos.749 and 756 of 2019 for impleading them as respondents to the writ proceedings are to be dismissed.

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20. To conclude,

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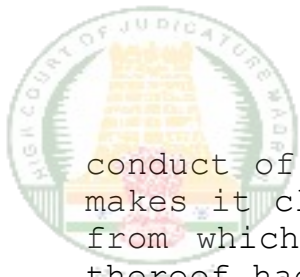
- (iii) The respondents in WP.(MD) No.18212 of 2018 are directed to issue certified copy of the document No.853 of 2013 dated 31.08.2012 with necessary endorsement of the pendency with regard to original title deed under Section 47-A(1) of Indian Stamp Act on each and every page of the certified copy of the document within a period of four weeks from the date of receipt of a copy of this order.

7. This Court, after analyzing the Division Bench judgment and also after considering the provisions of the Act, came to the conclusion that there is no bar or embargo in issuing certified copy of documents, which are pending enquiry under Section 47(A)(1) of the Act. I am in complete agreement with the findings of the learned single Judge in the order referred supra.

8. Once a sale deed is executed in favour of the petitioner and the same is presented for registration, the title to the property will pass on to the petitioner and the document in question has been retained only on the ground that there is undervaluation and the authority will fix an appropriate value and direct the payment of the additional stamp duty. The pendency of the proceedings under Section 47(A)(1) of the Act does not postpone the title getting transferred in favour of the petitioner. This Court can also take cue from the provisions of Section 47 of the Registration Act 1908, which speaks about the actual time from which a registered document will take effect. For proper appreciation, Section 47 of the Registration Act, 1908 is extracted hereunder:

"47. Time from which registered document operates:- A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

9. The registration of a document is a prima facie proof of intention of transfer of property, but no proof of operative transfer. The true test is the intention of the parties. The intention of the parties can be gathered only from the recitals in the sale deeds and from the surrounding circumstances and the



conduct of the parties. That is the reason why the above provision makes it clear that a registered document will operate from the time from which it would have commenced to operate, if no registration thereof had been required. In other words, it will date back to the date on which the execution of the sale deed was made.

10. The reasonings given by the learned Judge in the judgment referred supra perfectly falls within the scope and ambit of law.

11. In view of the above discussion, the impugned proceedings of the respondent dated 18.02.2021 requires interference and the same is hereby set aside. There shall be a direction to the respondent to issue certified copy of the document in pending Document No.9450/2008 dated 13.10.2008 with the necessary endorsement of the pendency of the proceedings under Section 47(A) (1) of the Act in each and every page of the certified copy of the document. This process shall be completed by the respondent within a period of four weeks from the date of receipt of a copy of this order.

12. In the result, this writ petition is allowed with the above directions. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)

RR

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
Melapalayam
Tirunelveli

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-21485[F] dated 07/07/2021)

+1 CC to M/s.SPL GP (SR-21502[F] dated 07/07/2021)



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