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W.P.No.43478 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM :
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Writ Petition No.43478 of 2016

T.N.Dhanalakshmi

... Petitioner

Vs.

The Sub-Registrar,
Office of Sub-Registrar,
Velachery,
Chennai.

... Respondent

PRAYER: Writ Petition filed under Article 228 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order passed by the respondent in Check Slip No.4/2016 dated 21.11.2016 and quash the same and consequently direct the respondent to receive the settlement deed dated 21.11.2016 executed by the petitioner in favour of her daughter Mrs.Chandrika Arul Prabhu in respect of residential flat being Old Door No.14/53, Present New Door No.13/53, "D" Block, (Cart Track Road), Vandikkaran Street, at Velachery, Chennai and duly register and return the same.

For Petitioner : Mr.R.Vishnu

For Respondent : Mr.C.Kathiravan,
Special Government Pleader

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ORDER

This writ petition has been filed for seeking issuance of Writ of Certiorarified Mandamus calling for the records relating to the order passed by the respondent in Check Slip No.4/2016 dated 21.11.2016 and quash the same and consequently direct the respondent to receive the settlement deed dated 21.11.2016 executed by the petitioner in favour of her daughter Mrs.Chandrika Arul Prabhu in respect of residential flat being Old Door No.14/53, Present New Door No.13/53, “D” Block, (Cart Track Road), Vandikkaran Street, at Velachery, Chennai and duly register and return the same.

2. The case of the petitioner is that the residential flat bearing Old Door No.14/53, present New Door No.13/53, “D” Block, (Cart Track Road), Vandikkaran Street, Velachery was originally belongs to petitioner's sister viz. Prof.R.S.Indira and the said property was acquired by the petitioner vide Registered Settlement deed Doc.No.5728/2012 dated 11.12.2012. Thereafter, the very same property was settled in favour of petitioner's



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daughter vide settlement deed dated 21.11.2016 and presented the said document for registration before the respondent on 21.11.2016, however the same was refused to be entertained by the respondent on the ground that the settlor has already reserved her rights and no alienation power is given in favour the petitioner. Aggrieved over the same, the petitioner has filed this writ petition.

3. Learned counsel for the petitioner drew the attention of ther Court in regard to the Clause 3 of the earlier settlement deed dated 11.12.2012, in which, the settlor has specifically stated that the property settled in favour of petitioner with full power of alienation subject to enjoyment of life interest of the settlor. Accordingly, he prayed for allowing this writ petition.

4. Learned Government Pleader appearing for the respondent would submit that there was a confusion in the settlement deed dated 11.12.2012 executed by the settlor in favour of the petitioner. Thereby the present impugned order is passed and he prayed for appropriate orders.



5. Heard the learned counsel on either side and perused the materials available on record.

6. The facts in the present case is not in dispute. Admittedly, the petitioner's sister executed a registered settlement deed in favour of the petitioner vide Doc.No.5728 of 2012 dated 11.12.2012 and settled the property with full power of alienation, subject to enjoyment of life interest of the petitioner's sister/settlor and thereafter, the petitioner decided to transfer the very same property in favour of her daughter and presented the document for registration, which was rejected on the ground that the settler i.e. the petitioner's sister reserved the right on herself and the petitioner has no power for alienation. In regard to the same, it is better to extract Clause 3 of the earlier Registered Settlement Deed Doc.No.5728 of 2012 dated 11.12.2012 hereunder:

“3. The SETTLEE shall take the property hereby settled absolutely with full power of alienation, subject to enjoyment of life interest of the SETTLOR in respect of the Schedule “B” hereunder described property, without any power of alienation by the SETTLOR, during her lifetime.”

In this respect, it is fit to extract the Clause 1 and 6 of the present settlement



deed dated 26.11.2016 executed by the petitioner in favour of her daughter:

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“1. In consideration of natural love and affection the SETTLOR, has on her daughter, Mrs.CHANDRIKA ARUL PRABHU, the SETTLEE herein, the SETTLOR both hereby settles absolutely unto and in favour of the SETTLEE the Schedule 'B' hereunder described property, inclusive of all common areas of use and amenities and all rights to which the SETTLOR is entitled to along with co-owners of the other flats in Schedule “A” hereunder described property, subject to enjoyment of life interest already reserved by SETTLOR's sister Mrs.R.S.Indira by her earlier Registered Deed of Settlement in favour of the SETTLOR herein, as stated supra, in respect of the Schedule “B” described property and its income alone during her lifetime, without any power of alienation.

.....

6. The SETTLEE is entitled to absolute own, possess and enjoy the Schedule “B” described property and after the lifetime of Mrs.R.S.Indira, with full power of alienation.”

7. On perusal of the above, it is clear that there is no violation of earlier settlement deed dated 11.12.2012 and in fact with reserving the rights of petitioner's sister/settlor, the property was settled in favour of petitioner's daughter. Hence, the impugned order dated 21.11.2016 passed by the respondent is liable to be interfered. Accordingly, the same is set aside and



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further, this Court directs the respondent to entertain the document presented by the petitioner for registration and pass appropriate orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

8. With the aforesaid observation and direction, this writ petition is disposed of. No costs.

28.10.2022

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Index : Yes/No

Speaking Order : Yes/No

To:

The Sub-Registrar,
Office of Sub-Registrar,
Velachery,
Chennai.



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M.DHANDAPANI,J.

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