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W.P.No.27953 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.27953 of 2022

S. Rasiya Begam

.. Petitioner

Vs.

1. The District Registrar ( Administration)  
Tiruppur, Tiruppur District.

2. The Sub Registrar  
Office of Sub Registrar  
Dharapuram.

3. Minor. Sivasukanth  
Represented by her mother Thilagavathi @ Thilaga  
Kollapatti, Manakadavu Village  
Dharapuram Taluk, Tiruppur Taluk.

..Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus directing the 2<sup>nd</sup> respondent to consider petitioners representation/objection dated 12.10.2022 and pass orders.

For Petitioner: N. Ponraj

Fr Respondents: Mr.C. Kathiravan,Spl GP



W.P.No.27953 of 2022

WEB COPY

## **ORDER**

The petitioner has filed this writ petition seeking a direction to the 2<sup>nd</sup> respondent to consider petitioners representation/objection dated 12.10.2022.

2. The learned Additional Government Pleader takes notice for the official respondents. In view of the consent expressed by the learned counsel appearing for either side, this petition is taken up for final disposal.

3. The case of the petitioner is that one Sivaraj entered into a Sale Agreement with the petitioner to sell the subject property and also received a sum of Rs.3,00,000/- as advance amount and thereafter refused to execute the sale deed. Due to which the petitioner filed suit for specific performance in O.S.no.67 of 2007 and the same was decreed in favour of the petitioner on 08.09.2009. Aggrieved over the same the said Sivaraj preferred an Appeal in A.S.No.111 of 2010 before the III Additional District Court, Dharapuram and the same was dismissed, hence, the said Sivaraj preferred Second Appeal in S.A.No.514 before this Court and the same was also dismissed.



W.P.No.27953 of 2022

WEB COPY

3.2. As the suit filed before the lower Court and the second appeal filed before this Court was made in favour of the petitioner he filed a execution petition in E.P.No.155 of 2009 and E.P.No.32 of 2013 before Sub court, Dharapuram for execution of Sale Deed and for delivery of possession respectively and both the petitions were ordered.

3.3. Thereafter the said Sivaraj and his father filed a suit for partition on the ground that the said property was an ancestral property and the same was dismissed. When this being the case the 3<sup>rd</sup> respondent herein who is the son of said Sivaraj filed a suit for partition against the said Sivaraj in O.S.No.70 of 2007 on the file of Subordinate Judge, Dharapuram and later collusively entered into compromise as if the property is an Ancestral property and obtained a collusive compromise decree on 05.02.2008.

3.4. Subsequently the 3<sup>rd</sup> Respondent filed an E.A.No.67 of 2013 in the petitioner's E.P.No.32 of 2013 as he is having share over the property based on the collusive compromise decree dated 05.02.2008. However the same



W.P.No.27953 of 2022

was dismissed on 15.03.2017. When this being the factual position the 3<sup>rd</sup> respondent filed a W.P.No.21762 of 2022 before this Court for Registration of Decree in O.S.No.70 of 2007 on the file of Sub-Judge, Dharapuram which is a collusive decree and of which validity was negated in E.A.No.67 of 2013. This Court in W.P.No.21762 of 2022 filed by the 3<sup>rd</sup> respondent had directed to registered the Decree O.S.No. 70 of 2007 on the file of Sub-Court, Dharapuram. Aggrieved over the same the petitioner has filed this writ petition

4. The learned counsel for the petitioner submits that One minor Siva sukanth acted fraudulently and obtained a collusive decree and based on the same this Court has directed to register the decree in O.S.No.70 of 2007 Hence prays this Court for appropriate orders.

5. Learned counsel appearing for the 3<sup>rd</sup> respondent submits that the decree in O.S. No.70 of 2007 still subsists and it has not been set aside in a manner known to law and only on the basis of the same, W.P. No.21762 of 2022 was filed in which this Court directed the Sub Registrar to register the



W.P.No.27953 of 2022

same, as there was no restraint order against the said decree. Therefore, he prays for dismissal of the present petition.

6. Heard both sides and perused the materials available on record.

7. A perusal of the materials available on record reveals that this Court, in W.P. No.21762/2022 vide order dated 25.08.2022, finding that there was no restraint order against the decree passed in O.S. No.70 of 2017, directed the Sub Registrar to register the said decree. The said order has not been put to test by way of appeal by the petitioner; rather the petitioner has filed the present petition to consider his objection/representation and to pass orders on the same before registering the said decree. When this Court had already pointed out that there is no restraint order, which would bar registering the said decree, the stand of the petitioners to consider his objections/representation before registering the decree is an exercise in futility and no useful purpose would be served as the Sub Registrar does not have any power to decide the title to the property. Therefore, the relief sought for by the petitioner cannot be granted.



W.P.No.27953 of 2022

WEB COPY

8. In the above circumstances, this writ petition fails and the same is dismissed. However, liberty is granted to the petitioner to challenge the decree passed in O.S. No.70 of 2017 in a manner known to law.

**19.10.2022**

Speaking Order : Yes/ No

Index : Yes/ No

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To

1. The District Registrar ( Administration)  
Tiruppur, Tiruppur District.

2. The Sub Registrar  
Office of Sub Registrar  
Dharapuram.



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W.P.No.27953 of 2022

**M.DHANDAPANI,J.**

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W.P.No.27953 of 2022

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