



W.P(MD).Nos.13052 of 2011 and WP(MD).No.12953 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 07.07.2022

ORDER PRONOUNDED ON : 14. 07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).Nos.13052 of 2011 and 12953 of 2012

and

MP(MD).Nos.2 of 2011 and 2 & 3 of 2012

W.P(MD).No.13052 of 2011

Seethai

...Petitioner

Vs

1.The Joint Commissioner
Hindu Religious and Charitable Endowment Department
Muthusamy Nagar
Sivagangai District

2.A.R.Narayanan Chettiar

..Respondents

W.P(MD).No.12953 of 2012

K.John Britto

...Petitioner

Vs

1.The Joint Commissioner
HR & CE Department
Govt.of Tamil Nadu
Sivagangai District

2.The Sub Registrar
Kalayarkoil Sub Registrar Office
Kalayarkoil, Sivagangai District

....Respondents



W.P(MD).Nos.13052 of 2011 and WP(MD).No.12953 of 2012

Prayer in W.P(MD).No.13052 of 2011: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent in his proceedings in Na.Ka.No.5033/2009/A3 dated 11.10.2011 and quash the same.

Prayer in W.P(MD).No.12953 of 2012 : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent herein in Na.Ka.No.5033/2009/அ3 dated 11.01.2011 and Na.Ka.No. 5033/2009/A3 dated 02.08.2012 in respect of registration of lands in Survey No.72/1B of Somanathamangalam Group, Kalayarkoil Village, Sivagangai District and the proceedings of the second respondent herein under Memorandum dated 14.08.2012 and quash the same and direct the second respondent to forthwith receive and register the Gift Settlement Deed dated 13.08.2012 executed and presented by the petitioner in favour of his wife, Mrs.G.Savari Ammal and return the said document after registration to the petitioner.

For Petitioner : Mr.K.Baalasundaram
in W.P.No.13052 of 2011
Mrs.A.L.Gandhimathi
in W.P.No.12953 of 2012

For Respondents : Mr.M.Lingadurai
Special Government Pleader
for R1 in W.P.No.13052 of 2011
and for Respondents in
in W.P.No.12953 of 2012

For R2 : No appearance in W.P.No.13052 of 2011



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COMMON ORDER

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The above writ petitions have been filed challenging the orders passed by the first respondent herein under which he has requested the Sub Registrar of Kalayarkoil Sub Registrar Office not to register any document relating to Survey No.72/1B in Somanathamangalam Village, Sivagangai District.

2.The writ petitioner in W.P(MD).No.12953 of 2012 has purchased the property from the writ petitioner in W.P(MD).No.13052 of 2011. Hence, both the petitioners are sailing together and they are challenging the order passed by the Joint Commissioner of Hindu Religious and Charitable Endowment Department, Sivagangai District.

3. The common case of the petitioners is that Survey No.72/1B of Somanathamangalam Village, Sivagangai Taluk is the ancestral property of one S.M.Narayanan Chettiar. The said S.M.Narayanan Chettiar had sold the entire extent in Survey No.72/1B under a registered sale deed dated 10.04.1990 in favour of one Sandhiyahu. In turn the said Sandhiyahu had sold the property in favour of the petitioner in W.P(MD).No.13052 of 2011 by means of registered sale deed on 05.12.1996. Pursuant to the said sale deed, the writ petitioner in W.P(MD).No.13052 of 2011 namely Seethai is



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said to be in exclusive possession and enjoyment of the properties. According to the said Seethai, patta has been mutated in her name and Chitta has also been issued in her name.

4.The petitioners have further submitted that the second respondent in W.P.(MD).No.13052 of 2011 one A.R.Narayanan Chettiar had filed O.S.No. 75 of 1994 against the predecessor in title S.M.Narayanan Chettiar for the relief of partition. In the said suit, a compromise decree was passed and the entire Survey No.72/1B was allotted in favour of the said S.M.Narayanan Chettiar.

5.The petitioner had further contended that Arulmighu Sornakaaleeswarar Temple had filed O.S.No.92 of 1991 before the Subordinate Court, Sivagangai for the relief of declaration that the suit schedule property belongs to the temple and it has been specifically endowed in favour of the temple. The temple had further prayed that the possession of the suit schedule property should be recovered from Narayanan Chettiar, Subbiah Chettiar and Sandhiyahu. According to the plaintiff temple, in the said suit, defendants 1 and 2 namely Narayanan Chettiar and Subbiah Chettiar are trustees and Sandhiyahu namely the third defendant is the purchaser from them. The said suit was decreed as prayed for by the trial



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Court on 09.12.1993. Thereafter, the defendants therein filed A.S.No.72 of 1995 before the Principal District Court, Sivagangai. The learned Principal District Judge allowed the appeal and dismissed the suit. As against the same, the plaintiff temple had filed S.A.No.1760 of 1997 before this Court. In Paragraph No.23 of the said judgement, this Court held that it is not an endowed property, but it is the separate property of one Somanathan Chettiar. That judgment has become final. Hence, the learned counsel for the petitioner had contended that the Hon'ble High Court has held that it is not a Kattalai property, but the private property of one Somanathan Chettiar. The impugned order passed by the first respondent herein directing the Sub Registrar not to register any document on the ground that it is an endowment property is not legally sustainable.

6.Per contra, the learned counsel appearing for the respondents had contended that in the said second appeal, the Hindu Religious and Charitable Endowment Department was not a party and hence, the judgment and decree is not binding upon the department. He had further contended that the temple alone had filed the previous suit as against some private parties without impleading the HR & CE Department. Hence, the said judgment cannot be relied upon the writ petitioner to contend that the disputed property is not an endowed property. Hence, he prayed for sustaining the order passed by the



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first respondent herein.

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7.I have considered the submissions made on either side.

8.The impugned order has been passed on the premise that survey No. 72/1B is a Kattalai property endowed to Arulmigu Swarnakaleeswarar Temple. A suit has been filed by the said temple in O.S.No.92 of 1991 as against one Narayanan Chettiar and one Subbiah Chettiar as purchaser from the trustees. The temple in the said suit had contended that it is a Kattalai property endowed for the benefit of the temple and hence, the trustees have no right whatsoever to alienate the same in favour of one Sandhiyahu. Though the said suit was decreed by the trial Court, on appeal, the learned Subordinate Judge had reversed the judgment and decree and dismissed the suit filed by the temple with a specific finding that it is a private property and it is not a Kattalai property endowed to the plaintiff temple. The said finding has been confirmed by this Court in S.A.No.1760 of 1997. Thereafter, on 11.10.2011, the present impugned order has been passed by the Joint Commissioner of HR & CE Department contending that the property in dispute is a Kattalai property endowed to Arulmigu Swarnakaleeswarar Temple and the Sub Register should not register any land with regard to the said survey number.



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9.The only defence that is raised by the learned counsel for the respondent in the writ petition is that the HR & CE Department was not a party to S.A.No.760 of 1997 and hence, the said judgment is not binding upon the department. A careful perusal of the judgment indicates that the temple has filed the suit through Sivagangai Devasthanam represented by its Manager. The main contention of the temple was that the property was the Kattalai property endowed for the benefit of the temple. After analysing the oral and documentary evidence, this Court has arrived at a finding that it is not a Kattalai property, but the private property of one Somanathan Chettiar. After the death of Somanathan Chettiar, the property has fallen with the hands of the Narayanan Chettiar. Hence, it is not correct to contend that just because HR & CE Department was not made as a party, the said judgment is not binding upon the department. Sivagangai Devasthanam as trustee of the said temple, has hotly contested the suit up to the second appeal. Hence, the impugned order is devoid of any merits. The present petitioners are the purchasers from the private persons to whom title has been confirmed by the High Court.

10.In view of the above said discussion, the impugned orders passed by the first respondent herein in both the writ petitions are set aside. The writ



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petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

14.07.2022

Internet : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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