

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.11340 of 2013

and

M.P(MD) Nos.1 & 2 of 2013

1. M.Raja (died)
2. Malarkodi
3. Jeganathan
4. Sathya

... Petitioners

(Petitioners 2 to 4 are substituted as LRs vide
Court order dated 13.10.2022 in
W.M.P(MD) No.17648 of 2022
in W.P(MD) No.11340 of 2013 by RVJ)

-vs-

1. The Inspector of General of Registration,
The Office of Inspector General of Registration,
Santhome Road,
Chennai – 600 028.
2. The District Registrar (Administration)
(In the rank of Assistant Inspector General of Registration)
The Office of District Registrar (Upstairs),
Contonment, Near by District Court,
Beemanagar Road,
Tiruchirappalli District – 620 001.

3. The Sub – Registrar (Joint- I)
The Office of Sub Registrar,
Contonment, Near by District Court,
Beemanagar Road,
Tiruchirappalli District – 620 001.

4. The Sub – Registrar,
The Office of Sub – Registrar,
Padappai Taluk,
Kanchipuram District.

5. V.H.Abdul Rasheet

6. Zaharudeen

.... Respondents

(R-6 is impleaded vide Court order
dated 24.04.2018 in W.M.P(MD) No.8518 of 2018)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of second respondent in Na.Ka.No.4617/Aa1/2012, dated 02.05.2012 and quash the same as illegal arbitrary and unenforceable consequently direct the respondents 3 and 4 to restore the original position in their records as per Doc.No.120/2004, on the file of third respondent and Document No.3716 of 2004, on the file of the fourth respondent that was available before the passing of impugned order by the second respondent dated 02.05.2012.

For Petitioners : Mr.V.K.Vijayaragavan
For R1 to R4 : Mr.K.S.Selvaganesan
Additional Government Pleader

For R-5 : Mr.R.Sureshkumar
For R-6 : No appearance

ORDER

The present Writ Petition has been filed challenging the order passed by the second respondent herein, under which, the power deed dated 14.01.2004, executed by one Ismayil in favour of M.Sahul Hameed, in Document No.120 of 2004 has been cancelled. Consequently, the sale deed executed by the said M.Sahul Hameed in favour of the writ petitioner on 29.12.2004 in Document No.3716 of 2004 has been cancelled.

2. The learned counsel for the petitioner had submitted that the original owner of the property is one G.Dhanasekaran, who has executed a registered sale deed in favour of one Ismail on 02.01.1981. Thereafter, the said Ismail has executed a registered power deed in favour of M.Sahul Hameed, on 14.01.2004. Based upon the said power deed, M.Sahul Hameed

has executed a registered sale deed in favour of the writ petitioner on 29.12.2004.

3. The learned counsel for the petitioner has further contended that suddenly, one Ismail, S/o.Hajee, had executed a registered power deed in favour of V.H.Abdul Rasheet, who is the fifth respondent herein as if he is the owner of the property on 07.03.2013. Based upon the said power deed, the fifth respondent herein has executed a registered sale deed in favour of the sixth respondent herein. Based upon the complaint lodged by the fifth respondent herein, the second respondent has conducted an enquiry and ultimately arrived at finding that the power deed in Document No.120 of 2004 and the consequential sale deed in Document No.3716 of 2004 in favour of the writ petitioner are fraudulent documents and he has proceeded to cancel the same. This order is under challenge in the present Writ Petition.

4. The learned counsel for the petitioner contended that the sixth respondent, who claims to be the owner, based upon the second power deed,

filed in O.S.No.19 of 2016 before the District Court No.II, Kancheepuram for the relief of declaration of title and recovery of possession as against the writ petitioner. After contest, the suit was dismissed on 31.10.2018. Hence, according to the learned counsel appearing for the petitioner, the title of the writ petitioner has been confirmed by the civil Court. The civil Court has further held that there is no title in favour of the sixth respondent herein. In view of the civil Court Judgement, dated 31.10.2018, the order impugned in the writ petition should be set aside and the documents in favour of the writ petitioner should be restored in the encumbrance certificate.

5. Per contra, the learned counsel appearing for the fifth respondent had contended that one Ismail, S/o. Hajee, alone is the owner of the property and he has rightly executed a registered power deed in his favour. Based upon the said power deed, he has executed a registered sale deed in favour of the sixth respondent herein. Hence, he prayed for sustaining the order impugned in the Writ Petition.

6. I have carefully considered the submissions made on either side.

7. The parties in the Writ Petition were already parties to a Civil Suit in O.S.No.19 of 2016, on the file of the District Court No.II, Kancheepuram. The said suit has been filed by the sixth respondent herein. In the said suit, the writ petitioner is arrayed as the first defendant. The fifth respondent herein has been arrayed as the fourth defendant in the said suit. The suit has been filed for declaration of title and recovery of possession. The prayer itself indicates that the writ petitioner is in possession of the property. In paragraph No.30 and 31 of the said judgment, the learned District Judge has held that the first defendant (writ petitioner herein) has got title to the property and the sale deed in favour of the sixth respondent herein (plaintiff therein) is not legally valid. Based upon the said observations, the civil Court has proceeded to dismiss the suit.

8. However, under the impugned order, the second respondent has entered in to the controversy of title and proceeded to hold that the power deed executed by Ismayil in favour of M.Sahul Hameed and consequential

sale deed executed by M.Sahul Hameed in favour of Raja are not valid in the eye of law. The order impugned in the Writ Petition is contradictory to the findings of the learned District Judge in O.S.No.19 of 2016. That apart, though the judgment was delivered in October 2018, so far, the sixth respondent herein, who claims to be the owner of the property has not challenged the said civil Court decree. In view of the above said facts, the order impugned in the Writ Petition is not sustainable and the same is liable to be set aside.

9. In view of the above said discussions, this Court passed the following order:-

- (i) The order impugned in the Writ Petition is set aside.
- (ii) The respondents 3 and 4 are directed to restore the encumbrance relating to Document No.120 of 2004, dated 14.01.2004 and Document No. 3716 of 2004, dated 29.12.2004.
- (iii) The official respondents are directed to restore the original position that was prevailing before 02.05.2012.

10. With the above said observation, this Writ Petition stands allowed.

No costs. Consequently, connected Miscellaneous Petitions are closed.

13 .10.2022

(2/2)

Index : Yes / No

Internet : Yes / No

ebsi

To

1. The Inspector of General of Registration,
The Office of Inspector General of Registration,
Santhome Road, Chennai – 600 028.
2. The District Registrar (Administration)
(In the rank of Assistant Inspector General of Registration)
The Office of District Registrar (Upstairs),
Contonment, Near by District Court,
Beemanagar Road, Tiruchirappalli District – 620 001.
3. The Sub – Registrar (Joint- I)
The Office of Sub Registrar,
Contonment, Near by District Court,
Beemanagar Road, Tiruchirappalli District – 620 001.
4. The Sub – Registrar,
The Office of Sub – Registrar,
Padappai Taluk, Kanchipuram District..

W.P(MD).No.11340 of 2013

R.VIJAYAKUMAR,J.

ebsi

W.P.(MD)No.11340 of 2013

13.10.2022

(2/2)