



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)No.3153 of 2022

1.Sumalatha
2.Manojkumar
3.Jeyakumar
4.Nithiskumar

.. Petitioners

Vs.

1.The Inspector General of Registration,
Office of the Inspector General of Registration,
Chennai - 600 028.

2.The District Registrar,
Office of the District Registrar,
Sivagangai District - 630 562.

3.The Sub Registrar,
Sub Registrar's Office,
Manamadurai Taluk,
Sivagangai District - 630 606.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing to the 3rd Respondent to remove the Encumbrance in the 1st petitioner's deceased husband and 2 to 4 petitioner's deceased father namely Sankar's ancestral property in Survey no. 282/6B3 in new Survey No. 498/1 to the extent of 655.75 square feet at Ward 12 of Manamadurai Taluk, Sivagangai District that the same encumbrance was made by the petitioner's filed in Partition suit against the same deceased Sankar in O.S. No. 88 of 2007 dated 30.06.2009, on the file of the Sub court, Sivagangai, based on the representation of the petitioners on 11.02.2022, within a stipulated time may be fixed by this Court.

For Petitioners : Mr.Senthilkumar

For Respondents : Mr.J.John Rajadurai
Government Advocate

ORDER

This writ petition has been filed for a Mandamus seeking for a direction to the third respondent to remove the encumbrance reflected in the Encumbrance Certificate on 03.01.2011, pertaining to the partition suit filed by the petitioners against Shankar, who is the first petitioner's husband based on the petitioner's



representation, dated 11.02.2022, within a time frame to be fixed by this Court.

2.The case of the petitioner is that pursuant to the death of Shankar the first petitioner's husband, they are now the absolute owners of the property in Survey No. 282/6B3 in new Survey No. 498/1 to the extent of 655.75 square feet at Ward 12 of Manamadurai Taluk, Sivagangai District. According to them, when Mr.Shankar was alive, the first petitioner, who is his wife had a dispute with him and they were living separately and a suit in O.S.No.88 of 2008 on the file of the Sub Court, Sivagangai, was also pending and preliminary decree dated 30.06.2009, was also passed in favour of the petitioners, who are the wife and children of Shankar.

3.During the pendency of the suit, on the request made by the petitioners, who are the plaintiffs in the said suit, an encumbrance was recorded with regard to the pendency of the suit in the Encumbrance Certificate of the subject property, on 03.01.2011. Shankar husband of the first petitioner and the father of the petitioners 2 to 4 died on 25.02.2017.

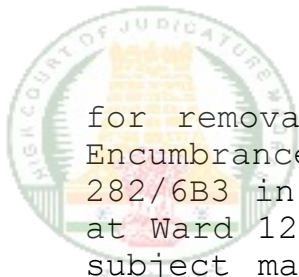
4.According to the petitioners, after the death of Shankar, they became entitled to the entire extent of land, which was the subject matter of the suit as they are his only legal heirs. The Legal Heirship Certificate has also produced before this Court. Since the Encumbrance Certificate with regard to the pendency of the suit continues to be reflected in the Encumbrance Certificate, the petitioner has given a representation on 11.02.2022 to the respondents seeking for removal of the encumbrance with regard to the pendency of the partition suit. Since their representation has not been considered till date, this writ petition has been filed.

5.Heard Mr.Senthilkumar, learned counsel for the petitioner and Mr.J.John Rajadurai, learned Government Advocate, who accepts notice on behalf of the respondents.

6.No prejudice will be caused to the respondents, if the petitioners' representation dated 11.02.2022, seeking for removal of encumbrance dated 03.01.2011, which is reflected in the Encumbrance Certificate, is considered on merits and in accordance with law after affording a fair hearing to the petitioners.

7.The case of the petitioners is that subsequent to the death of Mr.Shankar, who is the husband of the petitioner and the father of the remaining petitioners, the petitioners are his only legal heirs and therefore, having inherited the property, which is the subject matter of the partition suit, the encumbrance reflected in the Encumbrance Certificate on 03.01.2011, will have to be removed.

8.Accordingly, this Court directs the third respondent to remove the encumbrance reflected in the Encumbrance Certificate on 03.01.2011, in the petitioner's representation dated 11.02.2022, seeking



for removal of the encumbrance dated 03.01.2011, reflected in the Encumbrance Certificate for the property comprised in Survey no. 282/6B3 in new Survey No. 498/1 to the extent of 655.75 square feet at Ward 12 of Manamadurai Taluk, Sivagangai District, which was the subject matter of the partition suit in O.S.No.88 of 2008, on the file of the Sub Court, Sivagangai and pass final orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, after affording a fair hearing to the petitioner. The petitioner is permitted to produce the documentary evidence before the third respondent in respect of his contentions.

9. With the aforesaid directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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

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+1 CC to M/s.SPL GP (SR-7137[F] dated 18/02/2022)

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