

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.08.2022

PRONOUNCED ON : .10.2022

CORAM :

THE HONOURABLE MR. JUSTICE **G.R. SWAMINATHAN**

W.P. (MD) No.16483 of 2022
and W.M.P.Nos.11911 & 11912 of 2022

Sri Subbathal Alagappa Trust
Represented by its Managing Trustee
Ramkumar Giri, No.19, Sastri Road
Ramnagar, Coimbatore-9.

... Petitioner

-Vs-

1.The Inspector General of Registration
100, Santhome High Road, Chennai-600 028.

2.The Sub Registrar
Office of the Sub Registrar
Vadamadurai, Dindigul District.

3.The Joint Sub-Registrar I
Palani, Dindigul District.

4.Rajendran

5.Bongu Venkat Rao

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents 1 to 3 to delete the registration entries pertaining to Doc.No.

2055/2020 dated 22.10.2020 Doc. No.2576 of 2020 dated 16.12.2020, Doc.No.2664/2020 dated 24.12.2020, Doc.No.27/2022 dated 05.01.2022 and Doc.No.3971/2022 dated 30.06.2022 reflected in the encumbrance certificate in relation to the subject property, within a time frame fixed by this Hon'ble Court.

For Petitioner : Mr.Sricharan Rangarajan
for Mr.K.Gowtham Kumar

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader
-for RR 1 to 3
Mr.M.P.Senthil for Mr.D.Venkatesh
-for R4 and R5

ORDER

Heard both sides.

2. The petitioner seeks deletion of the petition mentioned registration entries from the Encumbrance Register. Doc.No. 2055/2020 registered on the file of the 3rd respondent was executed by one P.Kumar in favour of his brother P.Rajendran. It is a deed of settlement. Doc.No.2576/2020 dated 16.12.2020 was executed by Mrs.Rasammal and her son Kumar in favour of P.Manoranjitham who is the daughter of Rasammal and sister of Kumar. It is also a deed

of settlement. Doc.No.2664/2020 dated 24.12.2020 was executed by Mrs.Pooranam in favour of Mrs.Janaki alias Amul Mary. It is a deed of release. Doc.No.27/2022 dated 05.01.2022 is a power of attorney executed by Mrs.Manoranjitham in favour of P.Rajendran. Doc.No.3971/2022 dated 30.06.2022 is a deed of sale executed by Thiru Rajendran in favour of the 5th respondent herein.

3. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and prayed for allowing the writ petition. Per contra, the learned counsel appearing for the contesting respondents submitted that once a document has been registered, the registering authority cannot cancel the same. Since the parties are at loggerheads on the issue of title, it is only the jurisdictional civil court that can grant the relief now sought for. The learned counsel further submitted that this writ petition is not maintainable. He relied on the decision of the Hon'ble Supreme Court in *Satya Pal Anand v. State of Madhya Pradesh and others* [2015 (15) SCC 263]

4.I carefully considered the rival contentions and went through the materials on record.

5. Under certain circumstances, writ petitions questioning registration of documents can be maintained. For instance, the registering authority cannot register a deed unilaterally cancelling a registered sale deed. The Hon'ble Full Bench of the Madras High Court vide order, dated 02.09.2022, made in **W.P.(MD)No.6889 of 2020 etc.**, held as follows:-

" 44. ...

(a)A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled.

(b)Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or extinguish any right, title or interest in the property.

(c)Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.

(d)The transferee or any one claiming under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration."

6.In fact, the aforesaid decision rests on the recent decisions of the Hon'ble Apex Court reported in **(2022) 7 SCC 1 (Veena Singh (Dead) through LRs. Vs. District Registrar / Additional Collector and another)** and **2022 SCC On-line SC 544 (Asset Reconstruction Company (India) Limited V. S.P.Velayutham and Others)**. In **(Veena Singh (Dead) through LRs. Vs. District Registrar / Additional Collector and another) (2022) 7 SCC 1**, it was held as follows:-

"30. In the event of a refusal by the Registrar, a suit can be filed by a party in terms of the provisions of Section 77 before a civil Court, praying for a decree directing the document to be registered. On the other hand, an order of the Registrar directing the registration of a document is amenable to a challenge under Article 226 of the Constitution. While seeking a writ of Certiorari, the person moving the petition before the High Court would be entitled to establish whether the registration has been ordered in breach of the statutory provisions and is contrary to law. The mere existence of the remedy available before a civil court, under Section 9 of the CPC to avoid the document or to seek a declaration in regard to its invalidity, will not divest a person, who complains that the order passed by Registrar for the registration of the document was contrary to statutory provisions, of the remedy which is available in the exercise of a Court's writ jurisdiction under Article 226 of the Constitution. ..."

7.In **2022 SCC On-line SC 544 (Asset Reconstruction Company (India) Limited V. S.P.Velayutham and Others)**, it was held as follows:-

"29. ... Section 34(3) speaks about the enquiry to be conducted and the satisfaction to be arrived at by the Registering Officer. Section 34(3) (c) imposes an obligation on the Registering Officer to satisfy himself about the right of a person appearing as a representative, assign or agent. This prescription has to be read with rule 46 of the Tamil Nadu Rules.

...

37. Therefore, if the Registering Officer had verified the recitals contained in the registered deed of PoA dated 23.08.2006, to see if the power agent had the power to do what he did, he would have refused the registration of the document. Rule 46 of the Tamilnadu Registration Rules ordains what the Registering Officer is obliged to do, (i) when a document is presented for registration under a special PoA; and (ii) when a document is presented for registration under a general PoA. It was the failure on the part of the Registering Officer to do what he is required to do, that convinced the learned Single Judge to invoke the writ jurisdiction. But the Division Bench overturned the decision of the learned Judge on the ground that the writ court ought to have

relegated the parties to the civil Court.

...

53. *... But where a party questions only the failure of the Registering Authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court under Article 226 stands completely ousted. This is for the reason that the writ jurisdiction of the High Court is to ensure that statutory authorities perform their duties within the bounds of law. ...*

...

58. *... If the Registering Officer under the Act is construed as performing only a mechanical role without any independent mind of his own, then even Government properties may be sold and the documents registered by unscrupulous persons driving the parties to go to civil court. Such an interpretation may not advance the cause of justice."*

8. Having noted the legal position, let me come to the facts on hand. Sree Suppathal Alagappa Trust filed O.S.No.139 of 1975 on the file of Subordinate Judge, Dindigul for recovery of possession of the properties set out in the suit schedule. The suit was decreed as prayed for on 29.07.1976. Sree Ayyappa Aalaya Sangam, the 4th defendant in the suit filed appeal before the High Court but the

same was dismissed. Challenging the same, the Sangam filed Civil Appeal No.1809 of 1981 before the Hon'ble Supreme Court. After recording the undertaking that the construction put up already will not be demolished the appellants were directed to hand over possession of the suit property on or before 31.01.1996. Subsequently, vide proceedings dated 16.06.2001 the Tahsildar Palani also mutated the revenue records in favour of the writ petitioner Trust in respect of the subject property. The property originally belonged to one Avvai Ammal. She executed Trust Deed as early as on 07.07.1916 in favour of one Palaniappa Chettiar. After his death and that of his son Subramanya Chettiar, the property was transferred by Subramanya Chettiar's wife in favour of the writ petitioner on 26.02.1975 under Doc.Nos.162 and 163 of 1975. Rectification Deeds dated 20.03.1975 were also executed under Doc.Nos.570 and 571 of 1975. While so, Patta was mutated in favour of Avvai Ammal and 16 others in the year 2001 and based on the writ petitioner's request, it was rectified vide order dated 16.06.2001. The 4th respondent and his family filed an appeal before RDO, Palani who vide order dated 18.12.2002 directed restoration of patta in their names. The writ petitioner has

challenged the same and the revision petition filed by it is pending before the DRO, Dindigul. The 4th respondent's father Thiru Palaniappan and others raised dispute with the writ petitioner leading to filing of a police complaint as well as an injunction suit in O.S.No.247 of 2003 on the file of the District Munsif Court, Palani. O.S.No.247 of 2003 was decreed on 24.03.2008 in favour of the writ petitioner. The 4th respondent's brother Thiru T.Kumar and his mother Rajammal were shown as defendants in the said suit. It has been found therein that the subject property belongs to the writ petitioner Trust.

9.Since the writ petitioner came to know that the 5th respondent is proposing to buy the property from the 4th respondent, the petitioner lodged objections before the 3rd respondent. When respondents 4 and 5 presented the sale deed for registration, the 3rd respondent issued refusal check slip dated 10.06.2010. The registering authority took note of the judgment and decree dated 24.03.2008 passed by the District Munsif Court, Palani in O.S.No.247 of 2003. Challenging the same, the 4th respondent herein filed W.P.(Md) No.13249 of 2022. The writ

petition was listed for admission on 27.06.2022 and notice was ordered returnable by 25.07.2022.

10. During the pendency of the aforesaid writ petition, the 4th respondent executed sale deed dated 28.06.2022 and the same was registered by the Sub Registrar, Vadamadurai, Dindigul District on 30.06.2022 as Doc.No.3971/2022. Under this sale deed as many as three items have been conveyed. While item No.1 falls within the territorial limits of the 2nd respondent, items 2 and 3 fall within the limits of the 3rd respondent. It is obvious that the respondents 4 and 5 have presented the sale deed dated 28.06.2022 by including one more item of property so as to confer jurisdiction on the 2nd respondent. When the 3rd respondent had already issued the refusal check slip in respect of the property comprised in T.S.No.860/1 in Palani Town, till it is set aside in the manner known to law, the 4th respondent could not have dealt with the said property. In fact the 4th respondent had already filed W.P.(Md) No.13249 of 2022 in this regard. The said writ petition had been subsequently dismissed by this Court in view of the conduct shown by the 4th respondent

herein. It is well settled that grant of relief under Article 226 of the Constitution of India is discretionary. If the party betrays bad faith, he can be non-suited on that sole ground. On account of the dismissal of W.P.(Md) No.13249 of 2022, the refusal check slip has become final. The 4th respondent had attempted to overreach the process of this Court. The petitioner's title over the property comprised in T.S.No.860/1, Palani has been declared in favour of the writ petitioner by the Hon'ble Supreme Court in Civil Appeal No.1809 of 1981. The District Munsif Court Palani had also granted permanent injunction in favour of the writ petitioner Trust in O.S.No. 247 of 2003. In any event, without getting the refusal check slip dated 10.06.2022 issued by the 3rd respondent set aside, the 4th respondent could not have got Doc.No.3971/2022 registered on the file of the 2nd respondent in respect of the property covered by the refusal check slip.

11.Mrs.Rasammal and her son Thiru Kumar executed settlement deed dated 16.12.2020 (Doc.No.2576/2020) in favour of Mrs.Manoranjitham. But the executants of the said document had

already lost in O.S.No.247 of 2003 filed by the petitioner Trust. Doc.No.2664/2020 was executed by Mrs.Pooranam, daughter of Siluvaimuthu. The said Siluvaimuthu figured as the 3rd defendant in O.S.No.247 of 2003. Doc.No.27 of 2022 had been executed by Manoranjitham in favour of the 4th respondent and the 4th respondent executed Doc.No.3971 of 2022 in favour of the 5th respondent. It is obvious from the foregoing that the executants have clearly overreached the judicial process. They have taken advantage of erroneous entries in the revenue records. It is well settled that revenue entries cannot prevail over judicial decisions. Since the refusal check slip issued by the 3rd respondent is still holding good, the 4th respondent could not have conveyed the properties covered thereunder vide Doc.No.3971 of 2022. Doc.No. 3971 of 2022 on the file of the 2nd respondent cannot convey any title to the 5th respondent in respect of the properties comprised in T.S.No.860/1 measuring an extent of 41442 Sq.ft in Ward No.3, Block No.18, South Giri Street, Palani Town. In respect of the property located in Vadamadurai, Doc.No.3971/2022 will hold good. The 2nd respondent as well as the 3rd respondent are directed to enter this order in the Encumbrance Register. The writ petition is

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

11.10.2022

Index : Yes/No

Internet : Yes/No

KST

To

- 1.The Inspector General of Registration
100, Santhome High Road, Chennai-600 028.
- 2.The Sub Registrar
Office of the Sub Registrar
Vadamadurai, Dindigul District.
- 3.The Joint Sub-Registrar I
Palani, Dindigul District.

W.P.(Md) No.16483 of 2022

G.R. SWAMINATHAN, J.

KST/skm

Pre-delivery Order Made in

W.P. (MD) No.16483 of 2022

11.10.2022