



W.P(MD)No.20257 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.20257 of 2021

U.Jaffer Ali

... Petitioner

Vs.

- 1.The District Collector,
Collectorate Building,
Madurai – 625 020.
- 2.The Revenue Divisional Officer (Stamps),
Collectorate Building,
Madurai – 625 020.
- 3.The Inspector General of Registration,
O/o. Inspector General of Registration,
Chennai.
- 4.The District Registrar,
Palace Road,
Madurai.
- 5.The Sub Registrar No.IV,
Madurai South,
Palace Road,
Madurai.
- 6.Rafiya
- 7.Ramjanbegam
- 8.Vahitha Rahman



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9.Sithikraja

10.Abdullah

11.Noormohammed

12.Umar Ayesha

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents particularly 5th respondent collecting the stamp duty according to law by way of Indian Stamp Act and the same has to be registered according to law in the records maintained by the 5th respondent in future course of time.

For Petitioner : Mr.A.Shahul Hameed

For Respondents : Mr.K.S.Selvaganesn,
Addl. Government Pleader for R1 to R5.
Mr.P.Kovilpitchai for R8 to R12
No appearance for R7

ORDER

Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the respondents 1 to 5 and the learned counsel for the respondents 8 to 12.

2.The case of the writ petitioner is that the petition mentioned property belonged to one Sikkandhar. The said Sikkandhar sold the property through his power agent in favour of one Salimraja. The said Salimraja is none other than



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the brother of the petitioner herein. The said Salimraja is said to have executed a hiba deed dated 16.11.2009 in favour of the petitioner. The petitioner wants to register the said document now. When the petitioner moved the registering authority, they declined to entertain the same. That led to the filing of this writ petition

3.The learned counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to issue a Writ of Mandamus as prayed.

4.I am not persuaded by the said submissions advanced by the learned counsel for the petitioner. As rightly pointed out by the learned Additional Government Pleader for the respondents 1 to 5, Section 23 as well as Section 32 of the Registration Act, 1908 will come in the way. The said provisions are as follows:-

“23. Time for presenting documents.—Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

Provided that a copy a of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.



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[23A. Re-registration of certain documents.]—Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it has not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefore under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration:

Provided that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid.

32. Persons to present documents for registration.—Except in the cases mentioned in 5 [sections 31, 88 and 89], every document to be



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registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,—

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such a person, or

(c) by the agent of such a person, representative or assign, duly authorised by power-ofattorney executed and authenticated in manner hereinafter mentioned.

[32A. Compulsory affixing of photograph, etc.]—*Every person presenting any document at the proper registration office under section 32 shall affix his passport size photograph and fingerprints to the document:*

Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.] ”

5. In this case, the document was executed way back in the year 2009. The period of four months set out in Section 23 of the Registration Act expired long long ago.

6. The document can be presented only by Salimraja or his authorized agent. The said Salimraja is said to be missing. An FIR has also been registered in this regard. But neither the registering authority nor the Court can come to the rescue of the petitioner for this unfortunate situation.



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7.No Mandamus can be issued contrary to law. If I issue a Writ of Mandamus as prayed for, that would run counter to Sections 23 and 32 of the Registration Act.

8.As per Section 129 of the Transfer of Property Act, 1882, nothing set out in Chapter 7 of the Transfer of Property, 1882 will affect any rule of Mohammedan Law. Therefore, the petitioner can very well rely on the unregistered deed said to have been executed in his favour. If the petitioner's title is challenged, the petitioner can very well establish the factum of gift and thus, secure relief. If any declaration is granted by the jurisdictional civil Court, certainly the registering authority would be obliged to register the said decree.

9.With this clarification and observation, the writ petition is disposed of.
No costs.

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Index : Yes / No
Internet : Yes/ No
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