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W.P.(MD).No.14276 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 29.08.2022

ORDER PRONOUNCED ON : 15 .09.2022

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

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1.A.Veerayi (died)

2.A.Iniyan

3.A.Nidhi

4.P.Iruvan

....Petitioners

(The first petitioner died memo recorded
vide Court order dated 23.08.2022)

-Vs-

1.The District Registrar (Administration)
Madurai North
Madurai District

2.The Joint Sub-Registrar
Madurai North
Madurai District

3.S.Rajadurai

.....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records related to the impugned order made in A.P.No.2/2013 dated 31.07.2014 on the file of the



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first respondent by confirming the order of the second respondent herein, made in rejection of Registration No.1/2013 dated 26.04.2013 and to quash the same as illegal and un constitutional, consequently direct the second respondent herein to register and release the release deed dated 30.01.2013 as presented by the petitioners.

For Petitioners : Mr.M.Thirunavukkarasu

For R1 & R2 : Mr.J.K.Jeyaseelan
Government Advocate

For R3 : Mr.S.Ramesh

ORDER

The present writ petition has been filed challenging an order passed by the first respondent herein confirming the order of the second respondent herein under which the rejection of registration of a document has been confirmed. The petitioner has prayed for a mandamus to direct the second respondent to register and release the release deed dated 30.01.2013 as presented by the petitioners.

2.According to the petitioners, the property comprised in Survey No. 9/5 having an extent of 1 acre 28 ½ cents in Karisalkulam Village originally belonged to one Periya Vettai and his wife Kittupillai. They passed away leaving behind three sons namely Ayyavu, Ammavasai and Iruvan. The second petitioner claims that he is the son of Ammavasai. After the death of



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Periya Vettai and Kittupillai, all the three brothers have partitioned the properties equally and each was entitled to 42 ½ cents.

3.The petitioners had further contended that Ammavasai and his brother Iruvan have jointly executed a registered power deed in favour of one Rajadurai under a registered power deed dated 10.08.1998 for the purpose of selling the above said properties with respect to their shares. Likewise Ayyavu and his son have also executed a separate power of attorney to appoint the third respondent as their power agent. Thus, Rajadurai who arrayed as third respondent herein has got power to deal with the property.

4.The petitioners had further contended that Ayyavu had filed O.S.No. 225 of 2002 on the file of the Madurai Taluk District Munsif Court against his power agent Rajadurai and his two brothers for permanent injunction restraining his power agent from selling the remaining extent of land. The said suit came to be dismissed on the ground that the third respondent has already sold the entire extent of land allotted to Ayyavu. Thereafter, the said Ayyavu has cancelled the power deed executed in favour of the third respondent in view of certain disputes between himself and the third respondent. Thereafter, the fourth petitioner namely Iruvan has also cancelled the power deed executed in favour of the third respondent by way of



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registered deed of cancellation dated 30.06.2011. In the meanwhile, Ammavasai died on 18.09.2007 leaving behind the petitioners 1 to 3 herein.

Since Ammavasi had passed away, the power deed executed in favour of the third respondent by him got automatically terminated. However, due to abundant caution, the petitioners herein have also cancelled the power deed executed in favour of the third respondent on 30.06.2011. At the time of cancellation of power of attorney, Plot No.18 and western portion and southern portion of Plot No.17 has not been sold by the third respondent to anybody. But, in order to create encumbrance, the third respondent herein sold Plot No.18 to himself by way of registered sale deed dated 10.01.2013. In the meantime, on 30.01.2013, the fourth petitioner and the petitioners 1 to 3 herein have released their shares in respect of Plot No.18 and the western and southern portion of Plot No.17 (unsold by the third respondent) by virtue of a registered release deed.

5.The petitioners have further contended that the said release deed was presented for registration on 30.01.2013 before the second respondent and the same was kept pending as pending Document No.35/2013. Thereafter, by a proceedings dated 26.04.2013, the second respondent herein has refused to register the release deed presented by them. As against the said order of the second respondent, the petitioners have filed an appeal before the first



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respondent under Section 72 of the Registration Act, 1908 (Amended Act 48 of 2001). The first respondent by his order dated 31.07.2014 has dismissed the appeal. The said order is impugned in the present writ petition.

6. According to the learned counsel for the petitioners, the first and second respondents have gone into the title of the petitioners and the third respondent herein and they have refused to register the said release deed. Hence, according to the petitioners, respondents 1 and 2 have no jurisdiction whatsoever to go into the issue of title. Hence, the order passed by the first respondent confirming the order passed by the second respondent are liable to be set aside.

7. Per contra, the learned counsel appearing for the respondents had contended that the release deed deals with Plot No.18 and western and southern portion of Plot No.17. This area falls within eastern portion of the entire lay out which was allotted to the share of Ayyavu. After the death of Ayyavu, his son Sekar has executed a registered power deed in favour of the third respondent. Only based upon the said power deed, three sale deeds have been executed on 20.10.1999 for covering an extent of 12 $\frac{3}{4}$ cents. Thereafter, with regard to Plot No.18, the power agent namely Rajadurai has got a sale executed in his favour on 10.01.2013. Only citing this



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encumbrance, the respondent authorities have refused to register the release deed which was presented by the writ petitioners. Since the property belongs to Ayyavu and it has been dealt with by his son Sekar and a sale deed has been executed in favour of the third respondent Rajadurai for the same property, the petitioners are now attempting to create a document without any title. Hence, this document should only be treated as a fraudulent document without any title. Therefore, the respondents 1 and 2 were right in rejecting the document. Hence, they prayed for dismissal of the writ petition.

8.I have considered the submissions made on either side and perused the materials available on record.

9.It is admitted by the parties that the properties in dispute were jointly owned by one Periya Vettai and Kittupillai having an extent of 1.25 acres. It is also admitted fact that after the death of original owner, it devolved to three sons, namely Ayyavu, Ammavasai and Iruvan. Each having 42 ½ cents. It is also not in dispute that Ammavasai and Iruvan have jointly executed a power deed in favour of one Rajadurai who is arrayed as third respondent herein. Similarly, Ayyavu has also executed an independent power deed in favour of Rajadurai.



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10.A perusal of the judgement in O.S.No.225 of 2002 indicates that Ayyavu along with two others have jointly filed a suit against his power agent Rajadurai and the petitioners herein for the relief of permanent injunction. In the said suit, Ayyavu has contended that each one of the brothers are entitled to 42.8 cents out. Out of 42.8 cents, he has given 14 cents to his son Sekar and he is entitled to balance 28.8 cents. Despite cancellation of power deed, his power agent Rajadurai is attempting to alienate the property. Hence, he has filed the said suit for permanent injunction. In the said suit, the power agent who is arrayed as the first defendant had filed a written statement contending that the total extent that was available for Ayyavu after measurement was found to be only 38 cents and 90 sq.ft and not 42.8 cents. Out of 38.90 cents, 3 cents have been encroached by a third party. The balance 35 cents has been sold in June 2000 itself and a sum of Rs.3,35,000/- has been paid to the said Ayyavu and his son Sekar. The stand of Rajadurai is that whatever property that was allotted to Ayyavu has already been sold away by him. The said contention of the power agent Rajadurai was accepted by the trial Court and the suit in O.S.No.225 of 2002 has been dismissed.

11.The present release deed has been executed by Iruvan and wife of Ammavasai and daughter of Ammavasai in favour of Iniyan for Plot No.18.

The second respondent has refused to register the document by way of an



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order dated 30.01.2013 on the ground that the antecedent title of the executant are doubtful. The appellate authority by his order dated 31.07.2014 has also gone into title and he has refused to register the document and confirmed the order passed by the second respondent.

12.A perusal of the order passed by the second respondent and the impugned order will clearly indicate that the registration authority have gone into the title of the executor in the release deed dated 30.01.2013 and they have arrived at a finding that the executor's title is doubtful and on the sole ground, they have refused to register the document.

13.Rule 55 of Registration Rules is extracted as follows:

“55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:-

(a) that the parties appearing or about to appear before him are not the persons they profess to be;

(b) that the document is forged;

(c) that the person appearing as a representative, assign or agent, has not right to appear in that capacity;

(d) that the executing party is not really dead, as alleged by the party applying for registration; or



(e) that the executing party is a minor or an idiot or a lunatic”.

14.A perusal of the above said statutory rules will clearly indicate that the registering authorities have no jurisdiction whatsoever to go into the question of title of the parties executing the document. Any attempt made by the authority to go into the title, would only amount to usurping the jurisdiction of the Civil Court. In the present case, without raising any doubt, the authorities have registered the Document No.78 of 2013 in favour of Rajadurai. However, at the instance of the said Rajadurai, the respondent authorities have chosen to refuse to register the document on the ground of doubtful antecedent title. Hence, it is clear that the authorities have exceeded their jurisdiction and the order impugned in the writ petition is not legally sustainable.

15.In view of the above said discussion, the order impugned in the writ petition is set aside and the second respondent is directed to register the release deed presented by the writ petitioners on 30.01.2013, if it is otherwise in order. However, if the third respondent has got any right or title over the property covered under the release deed, he is always at liberty to approach the Civil Court to ventilate his grievance. In case, if any civil suit is filed, the



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said Court shall decide the matter without being influenced by any one of the observations made in this writ petition.

16. With the above observations, the writ petition is allowed. No costs.

15 .09.2022

Internet : Yes/No

Index : Yes/No

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To

1. The District Registrar (Administration)
Madurai North
Madurai District

2. The Joint Sub-Registrar
Madurai North
Madurai District



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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