



W.P(MD)No.13461 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.11.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.13461 of 2015

and

M.P(MD)Nos.1 to 3 of 2015

Thenappan

... Petitioner

Vs.

1.The Sub-Registrar,
Sub-Registration Office No.2,
Sivagangai.

2.V.Karthickraja
3.K.S.Govindaraj
4.G.Senthilkumar
5.G.Raja

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the first respondent in Ni.Mu.No.79/2015, dated 23.06.2015, quash the same and consequently direct the first respondent to release the document of the petitioner pending with first respondent in Doc.No.P 201200005.

For Petitioner : M/s.J.Anandkumar

For R-1 : M/s.S.R.A.Ramachandran
Additional Government Pleader



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For R-2 : M/s.Navaskhan
for M/s.S.Muthukumar
For R-3 : M/s.V.R.Shanmuganathan
For R-4 : M/s.T.Balakrishnan
for M/s.A.K.Manickam
For R-5 : M/s.R.Amarnath

ORDER

The present Writ Petition has been filed challenging an order passed by the first respondent herein, under which, a sale deed presented by the second respondent for registering a document in favour of the writ petitioner has been rejected.

2. A perusal of the sale deed indicates that the sale deed intends to convey two items. One in Survey No.235/1, the other in Survey No. 557/19B. The second respondent is entitle to deal with Survey No.235/1 and there is no dispute raised by the private respondents. However, the private respondents have raised a dispute only with regard to Survey No. 557/19B. According to the second respondent herein, Survey No. 557/19B, originally belonged to one Sundaram Chettiyar, who had two sons by name, Varadharajan, Govindarajan and other legal heirs. According to the second respondent, Sundaram Chettiyar and his



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children had entered into an un-registered partition deed on 20.06.1988.

In the said un-registered partition deed, Survey No.557/19B has been allotted to the share of the second respondent's father, namely, Varadharajan. After the death of his father, the property was directly allotted to the share of the second respondent, who was represented by his father, Varadharajan. Hence, the second respondent derives his title through the un-registered partition deed. Based upon the said un-registered partition deed, he has chosen to execute the present sale deed in favour of the writ petitioner.

3. Per contra, the learned Counsel appearing for the private respondents contends that during his lifetime, Sundaram Chettiyar had executed a registered Will on 07.01.2004. In the said registered Will, the Survey No.557/19B has been allotted to the share of respondents 4 and 5, who are the sons of the third respondent herein. Hence, according to the learned Counsel for the private respondents, the un-registered partition deed is a doubtful document and the second respondent does not derive any title on the basis of the said document. The learned Counsel appearing for the second respondent disputes the registered Will in



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favour of the respondents 4 and 5.

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4. The learned Counsel appearing for the private respondents further contends that based upon the said un-registered partition deed, the second respondent had initiated O.S.No.14 of 2007 as against the private respondents on the file of the District Munsif-cum-Judicial Magistrate Court, Thiruppathur, for the relief of permanent injunction. The said suit was dismissed for default on 23.07.2010. Thereafter, the private respondents had approached the Tahsildar, Thiruppathur, alleging that the second respondent's name has been erroneously entered into the patta and requested the Tahsildar, Thiruppathur to mutate the revenue records in favour of the respondents 3 to 5. The said proceedings were disposed of on 25.05.2012, mutating the revenue records in favour of the private respondents, after cancelling the patta that was issued in favour of the second respondent herein. Hence, according to the learned Counsel for the private respondents, after having lost the suit in O.S.No. 14 of 2007 and the patta proceedings, dated 25.05.2012, thereafter, the second respondent cannot have any right over the disputed survey number, namely, Survey No.557/19B and hence, the sale deed said to



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have been executed by the second respondent in favour of the writ petitioner is not legally valid. Hence, he prayed for sustaining the order passed by the Sub-Registrar.

5. I have carefully considered the submissions made on either side and perused the documents filed on either side.

6. From the narration of the above said facts, it is clear that the second respondent is claiming title on the basis of an un-registered partition deed, dated 20.06.1988. On the other hand, the private respondents are claiming title to the same survey number on the basis of a registered Will, dated 07.01.2004. The validity or otherwise of these two documents have to be decided only by a competent civil Court. However, the first respondent herein has considered these two documents and has arrived at a finding that the un-registered partition deed is not valid and had proceeded to reject the sale deed executed by the second respondent in favour of the writ petitioner.



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7. As on today, the patta stands in the name of the private respondents. According to the learned Counsel appearing on either side, various civil suits are pending between the second respondent and the other respondents in relation to the same disputed survey number, namely, 557/19B. Unless the said issue is decided by the competent civil Court, any attempt made on the part of the second respondent to alienate the said disputed survey number, would cause great prejudice to the other parties. Only from this angle, this Court interferes in the order impugned in the writ petition.

8. As far as S.No.235/1, which is sought to be conveyed under the disputed sale deed, the private respondents have no objection whatsoever. Hence, the first respondent is directed to proceed with the registration of the sale deed, dated 06.01.2012, with regard to S.No. 235/1. As regards S.No.557/19B is concerned, it is left open to the second respondent to execute another document in favour of the writ petitioner, depending upon the result of the civil Court proceedings.



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9. In view of the above said facts, the order impugned in the writ petition is sustained and the second respondent is at liberty to execute any other document in favour of the writ petitioner in relation to S.No. 557/19B, depending upon the result of the civil Court proceedings. The Sub-Registrar is directed to refund the excess stamp duty paid by the writ petitioner with regard to S.No.557/19B.

10. With the above said observation, the writ petition stands disposed of. The civil court is directed to dispose of the suit, being uninfluenced by anyone of the observations made in the impugned order or by this Court in the writ petition. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

15.11.2022

Index : Yes / No
Internet : Yes / No
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R.VIJAYAKUMAR, J.



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To

The Sub-Registrar,
Sub-Registration Office No.2,
Sivagangai.

Order made in
W.P(MD)No.13461 of 2015

15.11.2022