



W.P.(MD).No.5329 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.5329 of 2016
and
W.M.P(MD) No.4782 of 2016

C.Raju

... Petitioner

-VS-

1. The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate,
Pattinapakkam,
Chennai – 600 028.

2. The Sub Registrar,
Velipattinam,
Ramanathapuram District.

3. Mani @ K.M.Subramanian

.... Respondents

(R-3 is impleaded vide order of this
Court, dated 15.09.2022 in
W.M.P(MD) No.11708 of 2022
in W.P(MD) No.5329 of 2016)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 16.02.2016 passed in check



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slip number 1 of 2016 by the second respondent and quash the same and consequentially, directing the second respondent to register the settlement deed, dated 16.02.2016 executed by the petitioner in favour of his sons.

For Petitioner : Mr.J.Barathan
For R-1 & R-2 : Ms.S.Jeya Priya
Government Advocate
For R-3 : Mr.T.Lajapathi Roy

ORDER

The present Writ Petition has been filed challenging the order passed by the Sub Registrar, under which, he has refused to entertain registration of a settlement deed said to have been executed by the writ petitioner in favour of his sons.

2. According to the learned counsel for the petitioner, the property in dispute originally belongs to Subbiah Nadar and Velu Nadar jointly. The said Subbiah Nadar had purchased the property under the Document, dated 08.05.1946. Thereafter, the said Subbiah Nadar has executed a registered mortgage in favour of Sundararajan, on 03.09.1947. The said Sundararajan has executed an Assignment Deed in favour of Ramalinga Nadar, on



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06.09.1956. The second Assignment Deed was executed by Ramalinga Nadar in favour of one Muthusamy Nadar, son of Rama Nadar on 27.10.1958. According to the learned counsel for the petitioner, the petitioner is the grandson of the said Subbiah Nadar. The joint owner, namely, Velu Nadar, has orally relinquished his share in favour of the writ petitioner's father viz., Chinnasamy Nadar. Thus, the petitioner is the absolute owner of the property.

3. The learned counsel for the petitioner has further contended that the third respondent herein is making a claim to the property on the ground that he is the legal heir of Assignee, namely, Muthusamy Nadar under Assignment Deed, dated 27.10.1958. The third respondent has further made a claim on the basis of the Assignment Deed, dated 09.11.1959. According to the learned counsel for the petitioner, the third respondent could not establish that they have been the legal heirs of Muthusamy Nadar and Assignment Deed is restricted only to the money decree and there is no reflection of any property, especially, the property in dispute. Hence, according to the petitioner, the third respondent did not have any right or title over the property.



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4. The learned counsel for the petitioner further submits that the parties on an earlier occasion had approached the Revenue Authorities for grant of patta. The said patta proceedings had culminated in the Writ Petition in W.P(MD) No.10504 of 2008. This Court, has arrived at a finding that there is a serious title dispute and directed both the parties to approach the competent Civil Court. This order was challenged by the third respondent herein in W.A.(MD) No. 95 of 2013. The said Writ Appeal was also dismissed, on 08.02.2013. After the order passed by the District Revenue Officer, the mother of the third respondent has executed a registered settlement deed in favour of the third respondent on 15.09.2005. When the Revenue officials have directed the parties to approach the competent Civil Court, the mother of the third respondent has executed the document in favour of the third respondent. Hence, looking from any angle, the third respondent will not get any title, based upon the said settlement deed, dated 15.09.2005.

5. The learned counsel for the petitioner has further contended that when the petitioner had executed a registered settlement deed and the same



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was presented for registration, the second respondent has refused to register the same citing the settlement deed, dated 15.09.2005. The second respondent has further relied upon a Circular, dated 08.11.2013 issued by the Inspector General of Registration, under which, he has directed the Sub Registrar to insist upon the Encumbrance Certificate and the document should be registered only when it reflects that the documents are executed by the last owner. The learned counsel for the petitioner further pointed out that in the paragraph No. 2 it is stated that if the document is not submitted by the last owner, the title, the legal heirship should be properly traced and each and every document should be registered.

6. The learned Government Advocate appearing for the second respondent has pointed out that the Circular has been issued under Section 69 of the Registration Act. A perusal of Section 69 of the Registration Act pointed out that the Inspector General of Registration is empowered to make Rules. Unless such Rules are submitted to the State Government for approval, they cannot be enforced. Hence, the learned counsel for the petitioner has further contended that by relying upon the said Circular, the document presented by the writ petitioner cannot be rejected. Hence, he



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prayed for allowing the Writ Petition and directing the second respondent to register the said settlement deed.

7. Per contra, the learned counsel appearing for the third respondent herein had contended that the writ petitioner's grandfather had originally mortgaged his property in the year 1947 and thereafter, he has not redeemed the same and hence, the family has lost title to the property. The third respondent has further claimed title on the basis of the settlement deed, dated 15.09.2005 and assignment deed, dated 09.11.1959. Once a document was standing in the name of the third respondent herein, the Registration Authorities cannot parallelly register the document which is tracing the title neglecting the third respondent herein. Hence, he prayed to sustain the order impugned in the Writ Petition.

8. I have carefully considered the submissions made on either side.

9. A perusal of the order impugned in the Writ Petition indicates that there is a settlement deed, dated 15.09.2005 with regard to the disputed survey number said to have been executed by the mother of the third



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respondent in favour of the third respondent. The second respondent has relied upon the Circular, dated 08.11.2013 to refuse to register the document on the ground that only the third respondent will be entitled to execute any documents. However, the present settlement deed has been executed by the writ petitioner in favour of his sons. The learned counsel for the petitioner had rightly relied upon the paragraph No.2 of the said Circular to contend that in case, the name of the person executing the document is not found in the Encumbrance Certificate, then the title should be properly traced and the Legal Heir Certificate has to be enclosed along with the documents which is presented for registration. Only on being satisfied, the Sub Registrar was entitled to register the said document. Hence, it is clear that the said Circular is not totally against the writ petitioner. The writ petitioner is always entitled to invoke the second paragraph.

10. However, the learned Government Advocate also brought to the notice of this Court that the Registration Act has been amended and Rule 55-A has been introduced in the Registration Rules. Whenever a document is presented for registration, the Sub Registrar is duty bound to invoke the said Rule before registering the said document.



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11. The learned counsel for the third respondent herein also brought to the notice of this Court Section 5(1) of the Patta Pass Book Act under which it has been stated that no document relating to transfer of any land by sale or any mortgage or exchange of settlement shall be registered by the registering authority unless the Patta Pass Book relating to said land is produced before the said registering authority.

12. Hence, a combined reading of section (5) (1) of Tamil Nadu Patta Pass Book Act with the Rule 55-A of the Registration Rules, under the Registration Act makes it clear that either the parent documents or the patta has to be produced by the persons who are intending to register the document.

13. In view of the above said facts, the second respondent herein ought to have considered the request of the petitioner whether it is falling under the second category of the Circular. That apart in view of the introduction of Rule 55 – A in the Registration Rules, the Circular dated



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08.11.2013 has been superseded by a statutory Rule. The said Circular alone has been relied upon by the second respondent herein for refusing to register the settlement deed executed by the petitioner in favour of his son.

14. In view of the fact that the Circular has already been superseded by a statutory Rule, the order impugned in the Writ Petition is set aside and the matter is remitted back to the file of the second respondent herein. The second respondent is directed to consider the registration of the document in the light of the Rule 55-A of Registration Rules after giving due opportunity to the writ petitioner and the third respondent herein.

15. With the above said observation, this Writ Petition stands allowed and remitted to the file of second respondent. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
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- To
1. The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate,
Pattinapakkam, Chennai – 600 028.
 2. The Sub Registrar,
Velipattinam,
Ramanathapuram District.



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R.VIJAYAKUMAR,J.

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