



W.P.(MD)No.11831 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :03.01.2023

CORAM

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD)No.11831 of 2013

and

M.P.(MD).Nos.1 to 3 of 2013

1.K.Jagatha (Died)

2.Krishnanmurali

... Petitioners

(P2 is impleaded as LRs, vide Court order dated 15.11.2022 in W.M.P. (MD).No.19192 of 2022 in W.P.(MD).No.11831 of 2013 by RVJ)

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.

3.The Sub Registrar,
O/o.Sub Registrar,
Sivakasi,
Virudhunagar District.

4.The Tahsildar,
Sivakasi Taluk, Virudhunagar District.

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5.Mr.T.Baskaran

6.T.Sreenivasan

7.R.Rajeshkumar

8.P.Madan Prakash

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the 3rd respondent in Ni.Aa.No.91/2011 dated 31.05.2011 and the consequential impugned order of the 2nd respondent in Na.Ka.A1/6909/11 dated 31.07.2012 and quash the same as illegal and consequently direct the 3rd respondent to register and release the gift deed 30.05.2011 executed by the petitioner in favour of her son, pending as document No.91/2011 on the file of the 3rd respondent within the time stipulated by this Court.

For Petitioner :Mr.E.Marees Kumar

For Respondents :Mr.V.Om.Prakash
Government Advocate for R1, R2 & R4

:Mr.S.Shanmugavel
Additional Government Pleader for R3

:Mr.V.Balaji for R5 to R8



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ORDER

This writ petition has been filed challenging the communications of the third respondent, dated 31.05.2011 and the second respondent dated 31.07.2012 and consequently, to direct the third respondent to register and release the gift deed, dated 30.05.2011, executed by the petitioner in favour of her son, which has been assigned in Document No.91/11.

2. The case of the petitioner is that an extent of 4.55 acres in Survey No.1605, Enjar Village, Sivakasi Taluk, was assigned by the Deputy Tahsildar, Virudhunagar, in the year 1969, in his proceedings No.218/78. Thereafter, the mother of the petitioner had been issued patta in Patta No. 1677 by the Settlement Officer in the year 1973. Due to the old age, she had executed a gift deed on 30.05.2011 in favour of her son and the same was taken on file by the third respondent and had been assigned Document No. 91/2011. However, the third respondent had not registered the document, on the allegation that there is a doubt as to the title of the land of the petitioner and therefore, by impugned communication, dated 31.05.2011, he had referred the matter to the second respondent herein and the second



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respondent, by the impugned communication, dated 31.07.2012, had stated that the claim of the petitioner cannot be entertained, as the patta has been issued in favour of one N.Dharma Raj Devar, based upon the updation of revenue records. Pending this writ petition, the petitioner had died and her son had substituted himself as petitioner in this writ petition.

3. The learned counsel for the petitioner would submit that when the order of assignment dated 21.04.1969 has been issued by the Deputy Tahsildar and he had been issued with patta, there had been no notice issued to the petitioner for mutating the revenue records during the registration and therefore, such updation itself is *non-est* and therefore, sought to set aside the order passed by the Tahsildar and direct the third respondent to register the document pending and release the same.

4. Countering his arguments, learned Additional Government Pleader, relying upon the counter filed by the second respondent, would submit that the son of the petitioner, who had now been substituted in this writ petition as petitioner, had earlier approached this Court in W.P.



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(MD).Nos.2820 and 4796 of 2012 and this Court, by order, dated 30.07.2012, had directed the second respondent herein to consider and dispose of the pending proceedings in Na.Ka.No.A3/3563/2011 dated 28.11.2011, sent by the fourth respondent herein. Pursuant to the order passed by this Court, the second respondent herein had conducted an enquiry, after giving opportunity to all the parties concerned. The petitioner had appeared before the second respondent representing the original petitioner and orders were passed on 22.05.2013. The said order of the second respondent has not been challenged. But, however, subsequent to the orders passed by the second respondent, suppressing the same, the petitioner had approached this Court with an innocuous prayer, to re-open the entire issue. He would further submit that one L.P.Krishnan, who is the husband of the deceased petitioner, was working as a Revenue Inspector for Mangalam firka, in the year 1968 and 1969 at Enjar Village, which comes within the Mangalam firka, by abusing his position, the order of assignment has been fraudulently made. The petitioner had not produced any document to substantiate her possession of the property and has only been relying upon the order of assignment, which could not have been made. Further, when



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update of revenue registers were made, there was no claim made by the petitioner. When that be so, she does not hold the title of the property. By executing the alleged gift deed, the petitioner is trying to create a title to the property.

5. The learned counsel appearing on behalf of the respondents 5, 6 and 8 would submit that the writ petition has been filed to bypass the order of the second respondent. The petitioner had wilfully suppressed the order passed by the Tahsildar and had prayed for certain relief. The land in issue had been in enjoyment and cultivation by one N.Dharma Raj Devar and therefore, the patta has been issued in his name, as early as on 25.12.1984. The petitioner had also not challenged the grant of patta in the name of said N.Dharma Raj Devar who had executed a sale deed in favour of the vendor of the respondents 5, 6 and 8, by sale deed, dated 09.02.1994 and patta has also been mutated in the name of the respondents vendor as early as on 06.05.1994. These respondents had purchased the same on 24.06.2008 and also got the revenue records mutated in their names. Thereafter, by registered sale deed, dated 16.12.2011, they had sold the property in favour



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of the respondents 6 to 8 and the revenue records have also been mutated in their names. None of these proceedings have been challenged by the petitioner, knowing fully well that the alleged assignment is a fraudulent assignment. Therefore, he would request this Court not to entertain this petition.

6. I have considered the rival submissions made on either side.

7. The writ petition has been originally filed by one Jagatha, W/o.Krishnan, seeking for the following relief:

“.. to call for the records relating to the impugned proceedings of the third respondent in Ni.Aa.No.91/2011 dated 31.05.2011 and the consequential impugned order of the second respondent in Na.Ka.A1/6909/11 dated 31.07.2012 and quash the same as illegal and consequently direct the third respondent to register and release the gift deed dated 30.05.2011 executed by the petitioner in favour of her son pending as document No.91/2011 on the file of the 3rd respondent.”



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8. Pending this proceedings, she had died and her son has impleaded himself as legal heir, pursuant to the order passed by this Court on 15.11.2022. The impleaded petitioner had earlier filed W.P.(MD).No. 2820 of 2012 for a Mandamus to direct the third respondent herein to forbear him from registering any document to be executed by the fifth respondent herein. He had also filed a further writ petition in W.P.(MD).No. 4796 of 2012, for a direction to the second respondent herein to dispose of the pending proceedings referred by the fourth respondent herein. A direction was also issued by this Court on 30.07.2012, directing the second respondent herein to dispose of the pending referred matter by the Tahsildar. The second respondent, after conducting a detailed enquiry, had passed orders on 22.05.2013, holding that the deceased petitioner had not produced any document to substantiate her possession and that during the updation of revenue records, patta has been issued in favour of one N.Dharma Raja Durai.



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9. The case of the petitioner before the second respondent was that when they had approached the third respondent herein for registration of a gift deed on 30.05.2011, the third respondent had refused to register the same and referred the issue to the fourth respondent. The fourth respondent, without conducting any enquiry, refused to register the same. The petitioner had made a claim that the lands were assigned to them by the then Deputy Tahsildar and patta has also been issued. Thereafter, during updation of revenue records, the patta has been given in favour of one N.Dharma Raja Durai and thereafter, it has been mutated in the name of the subsequent purchasers. The request before the second respondent was to recommend to the third respondent by rectifying the defects and directing to register the gift deed, which was assigned Document No.91/11 dated 31.05.2011. The second respondent herein, after conducting a detailed enquiry, has rejected the request of the deceased petitioner.

10. It is pertinent to note that the said enquiry has been attended by the beneficiary of the gift deed, namely, newly impleaded petitioner. On the demise of the original petitioner, this order of the second respondent had



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not been challenged either by the original petitioner or by the impleaded petitioner. The present petitioner cannot feign ignorance of such order passed by the second respondent. When such an order rejecting the claim of the petitioner for registration dated 22.05.2013, has not been challenged, the claim of the petitioner in the present writ petition to set aside the earlier orders, dated 31.05.2011 and 31.07.2011 passed by the respondents 3 and 4, which have been confirmed by the second respondent in his order, dated 22.05.2013, cannot be entertained. The orders of the second, third and fourth respondents have merged with the order of the second respondent. Hence, I find no merit in this writ petition.

11. Accordingly, this writ petition is dismissed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

03.01.2023

Index : Yes / No
Speaking Order/Non Speaking Order
sbm



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K.KUMARESH BABU, J.

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