



W.P(MD)No.12603 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12603 of 2015

S.Parthiban

... Petitioner

Vs.

1.The Sub Registrar,
Bohalur,
Paramakudi Taluk,
Ramanad District.

2.A.S.Ramesh

... 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 relating to the impugned order of the 1st respondent in Original Enquiry No.1/2015 dated 22.06.2015, quash the same and consequently direct the 1st respondent herein to register the sale deed dated 09.01.2015 executed by the 2nd respondent in petitioner's favour forthwith.



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For Petitioner : Mr.S.Srinivasa Raghavan

For Respondents : Mr.S.RA.Ramachandran,
Addl. Government Pleader for R1.
Mr.D.Kirubakaran for R2.

ORDER

Heard the learned counsel on either side.

2.The case of the petitioner is that the second respondent after executing sale deed dated 09.01.2015 in his favour he did not join him for presenting the same before the registering authority. The petitioner therefore resorted to what is known as compulsory registration. The first respondent issued notice to the second respondent. The second respondent denied the signature attributed to him. The first respondent thereupon issued the impugned order dated 22.06.2015 negating the petitioner's request for compulsory registration. The petitioner was also called upon to take back the document. Questioning the same, the present writ petition came to be filed.



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3.I am of the view that the petitioner should have availed the remedy set out in Section 73 of the Registration Act, 1908. Sections 73 to 77 of the Registration Act, 1908 read as follows:-

“73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.—(1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of complaints.

74. Procedure of Registrar on such application.—In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire.—



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(a) whether the document has been executed;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. Order by Registrar to register and procedure thereon.—*(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.*

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witness, and compel them to give evidence, as if he were a Civil Court and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908 (5 of 1908).



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76. Order of refusal by Registrar.—(1) Every Registrar

refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar; or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.”

4. In this view of the matter, the petitioner is permitted to apply to the jurisdictional Registrar under Section 73 of the Act. If the petitioner files such an application within a period of three weeks from the date of receipt of a copy of this order, the same will be entertained without reference to limitation. Thereafter, the Registrar shall adopt the procedure as set out in the statute. The entire exercise shall be completed within a period of twelve weeks thereafter. I make it clear that I have not gone into the merits of the matter.



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5.This writ petition is disposed of accordingly. No costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

The Sub Registrar,
Bohalur,
Paramakudi Taluk,
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G.R.SWAMINATHAN, J.

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