



W.P.(MD) No.4674 of 2014.

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.01.2023

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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD) No.4674 of 2014

Thangaraj

... Petitioner

/vs./

1.The Sub Registrar,
Kattuputhur,
Thottiyam Taluk,
Trichy District.

2.The District Registrar,
District Court Compound,
Trichirappalli.

3.Vaiyapuri

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to cancel the encumbrance in the nature of the sale agreement dated 29.04.1998 and noted in his books relating to the property in S.F. No.39/2 acre 0.60 cents and S. F. No. 39/4 acre 0.65 cents at Pidaramangalm Village Thottiyam Taluk, Trichy District.



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For Petitioner : Mr.R.Murali
For R1 & R2 : Mr.S.Shanmugavel
Additional Government Pleader
For R3 : No appearance

ORDER

A Writ of Mandamus has been sought to direct the first respondent to cancel the encumbrance in the nature of the sale agreement dated 29.04.1998 in respect of the property in S.F.No.39/2, measuring an extent of 60 cents and S.F.No.39/4, measuring an extent of 0.65 cents at Pidaramangalam Village, Thottiyam Taluk, Trichy District.

2.Heard Mr.R.Murali, learned counsel for the petitioner, Mr.S.Shanmugavel, learned Additional Government Pleader for the respondents 1 and 3 and none appears for the third respondent.

3.The case of the petitioner is that he is the owner of the property in S.F.Nos.39/2 and 39/4 at Pidaramangalam Village, Thottiyam Taluk, Trichy District. He had entered into a sale agreement with the third respondent on



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29.04.1998 bearing Doc.No.428/1998 on the file of the first respondent. The third respondent did not perform his part of contract and therefore, the sale agreement has become a voidable agreement.

4.The learned counsel for the petitioner would submit that the third respondent had initiated a suit in O.S.No.273 of 2000 seeking for specific performance of the agreement dated 29.04.1998. The said suit came to be dismissed for default by the learned II Additional Subordinate Judge, Trichirappalli in and by its judgment and decree dated 16.03.2005. Therefore, he would contend that in the light of the said judgment and decree, the first respondent should delete the entry in the encumbrance certificate, which reflects the sale agreement. The reason pleaded by the learned counsel for the petitioner is that such an entry in the encumbrance certificate causes serious prejudice and the petitioner is not even able to register a settlement deed on the ground that the sale agreement is an encumbrance on the property.

5.He would further submit that the suit filed by the third respondent had been dismissed as early as in the year 2005 and even till date, he had not taken



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out any application. He would further plead that the said agreement of sale cannot be now specifically enforced, as it is also hit by the law of limitation. Hence, he would seek a direction to the first respondent to remove the entry relating to the sale agreement bearing Doc.No.428/1998 dated 29.04.1998.

6.Countering his arguments, Mr.S.Shanmugavel, learned Additional Government Pleader for the respondents 1 and 2 would submit that there is no provision to remove the entry in the encumbrance certificate. The encumbrance certificate reflects the various transactions that had taken place with respect to the property. He would further submit that it is open for the petitioner to seek registration of the decree, by which the suit for specific performance had been dismissed for default. Contending so, he would submit that the Mandamus as prayed for should not be issued.

7.I have considered the arguments advanced by the learned counsels on either side.



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8.The prayer that is sought for by the petitioner at the outset, in my view, cannot be entertained, since as rightly pointed out by the learned Additional Government Pleader that the encumbrance certificate reflects the various transactions relating to a particular property. In this case, a registered sale agreement had been entered into between the petitioner and the third respondent. Even though the third respondent had initiated a suit for specific performance, he had allowed the same to be dismissed for default. The petitioner had also not initiated any proceedings for cancellation of the said agreement of sale. Had such proceedings been concluded and had the petitioner been successful, he could have registered the same with the Registration Department, which would nullify the sale agreement.

9.As rightly pointed out by the learned counsel for the petitioner, the suit has been dismissed 17 years back and the third respondent had not initiated any steps to restore the suit. In spite of receipt of notice in this writ petition, the third respondent had not appeared before this Court either in person or through a counsel, which only indicates that he has no interest in securing a specific performance of the agreement. As the agreement was also entered into in the year



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1998, the provisions of the Limitation Act would also render such agreement voidable and the petitioner in clear terms has expressed that he is not willing to perform his part of the contract.

10. In such circumstances, it will be open to the petitioner to register the decree of the learned II Additional Subordinate Judge, Thiruchirappalli made in O.S.No.273 of 2000 dated 16.03.2005. If any such application is made by the petitioner to register the decree, the first respondent shall without insisting any limitation proceed to register the same. I am fortified in issuing such direction in view of the order of this Court passed by this Court in W.P.33156 of 2022 dated 09.12.2022.

11. The Writ Petition is disposed of on above terms. However, there shall be no order as to costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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K.KUMARESH BABU, J.

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