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W.P.(MD)NO.19263 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.19263 of 2015

C.Jeya

... Petitioner

Vs.

1. The Sub Registrar,
Registrar Office,
Keelakarai,
Ramanathapuram District.

2. The District Registrar,
Registrar Office,
Ramanathapuram,
Ramanathapuram District.

3. The Inspector General of Registration,
O/o.Inspector General of Registration,
Chennai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to Na.Ka. No.26/2015 dated 07.09.2015 passed by the 1st respondent and quash the same as illegal and direct the 1st respondent to register the Gift settlement dated 02.11.2014.

For Petitioner : Mr.R.Ramadurai

For Respondents : Mr.N.GA.Nataraj,
Government Advocate.

* * *



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ORDER

Heard the learned counsel on either side.

2. The petitioner presented gift deed dated 02.11.2014 executed in favour of her brother Chandrasekara Gurukkal for registration. The property governed by the settlement belonged to one A.R.Palaniyappan. The petitioner claims that the said A.R.Palaniyappan had executed an unregistered Will dated 02.12.2012 in her favour and on the strength of the said Will, she had executed the gift deed.

3. The registering authority insisted on the death certificate of the testator. The petitioner produced the death certificate issued by Devakottai Municipality. It indicates that A.R.Palaniyappan passed away on 27.01.2013 itself.

4. However, the registering authority took the view that the document cannot be registered. He called upon the petitioner to take back the gift deed. Challenging the said communication dated 07.09.2015, the present writ petition came to be filed.



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5. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

6. The first respondent has filed counter affidavit and the learned Government Advocate took me through its contents. According to the first respondent, the Will relied on by the petitioner appears to be doubtful because Palaniyappan belonged to Chettiar community whereas the petitioner belongs to Brahmin community. The petitioner also did not produce patta. Relying on the circular dated 25.04.2012 issued by the Inspector General of Registration, the impugned refusal check slip was issued.

7. The learned Government Advocate submitted that the impugned order does not call for any interference. He prayed for dismissal of the writ petition.



8. I carefully considered the rival contentions and went through the materials on record.

9. I must state that I too entertain the very same doubt as expressed by the registering authority. The question is whether on that ground the document presented by the petitioner can be refused and the registration can be refused.

10. It has been held in more than one cases that the registering authority cannot insist on production of patta.

11. The petitioner claims that she is entitled to the property by virtue of the Will attributed to Palaniyappa Chettiar. It is true that the Will dated 02.12.2012 is not registered. But then a Will does not require registration. Till date, there has been no rival claim. The death of the testator is also beyond dispute. More than anything else, by a registered document, the settlee or purchaser merely gets what the executant possesses. If the petitioner has no title over the property, the settlee / her brother also will not get any title. The learned Government Advocate would point out that the



property governed by the Will is an ancestral property. If that be so, even if Palaniyappan had died without issues, still the class II legal heirs can lay claim. However, as on date, no claim appears to have come from any class II legal heir also. By registering the document in question, no person is going to be conferred with title. If any challenge is mounted, the Will will have to be proved in the manner known to law. The registration of the settlement deed executed by the petitioner will not amount to proof of the Will. All these issues are left open. Since the grounds set out in the impugned communication are not sufficient, the order impugned in the writ petition is set aside. The petitioner is directed to approach the first respondent along with the copy of this order. The first respondent shall carry out the remaining formalities and register the gift deed dated 02.11.2014 executed by the petitioner in favour of her brother and release it. This writ petition stands allowed. No costs.

19.07.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
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**G.R.SWAMINATHAN,J.**

PMU

To:

1. The Sub Registrar,
Registrar Office,
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