



W.A.(MD)No.1902 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**AND**

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD)No.1902 of 2023

A.M.Abdul Malik

... Appellant

Vs.

1.The Joint 1 Sub Registrar,  
Ramanathapuram District, Ramanathapuram.

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

3.Mohammed Barakathulla

4.Maheswaran

...Respondents

**PRAYER:** Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P.(MD)No.22561 of 2022, dated 23.08.2023 on the file of this Court.

For Appellant : Mr.G.Prabhu Rajadurai

For R1 & R2 : Mr.S.P.Maharajan,  
Special Government Pleader

For R3 & R4 : Mr.J.Bharathan



W.A.(MD)No.1902 of 2023

## **JUDGMENT**

(Judgment of the Court was delivered by **V.LAKSHMINARAYANAN.J.**)

This Writ Appeal arises against the order of the learned Single Judge in W.P.(MD)No.22561 of 2022, dated 23.08.2023.

2.The dispute relates to the property left behind by one late Jagubar Sadique Ali. He died on 01.03.2017. The writ petitioner claims to be the brother's son of the said Jagubar Sadique Ali. He wanted the registration of 'Hiba cum Will' dated 06.04.2022 executed by him in favour of Mohammed Aman. The registration of the said document was refused. Challenging the same, the Writ Petition was filed in W.P.(MD)No.7860 of 2022. By an order dated 25.04.2022, the refusal to register the document was set aside and the matter was remitted to the 1<sup>st</sup> respondent for the purpose of enquiring the legal representatives of the said Jagubar Sadique Ali and the writ petitioner and to decide afresh. Accordingly, by the order impugned in the Writ Petition on 01.08.2022, the 1<sup>st</sup> respondent refused to register the document. Challenging the same, the Writ Petition in W.P.(MD)No.22561 of 2022 came to be presented.



W.A.(MD)No.1902 of 2023

3.The 4<sup>th</sup> respondent to the Writ Petition purchased the property from the power of attorney of the legal heirs of the deceased Jagubar Sadique Ali by name one Mohammed Barakathulla, who has been arrayed as the 3<sup>rd</sup> respondent.

4.The learned Single Judge, by an order dated 23.08.2023, dismissed the Writ Petition on the ground that there was some alternative remedy available to the writ petitioner under Section 72 of the Registration Act, 1908 (hereinafter referred to as 'the Act'). Impugning the same, the present Writ Appeal is filed.

5.Heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the appellant, Mr.S.P.Maharajan, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.J.Bharathan, learned counsel appearing for the respondents 3 and 4.

6.Insofar as the order of the learned Single Judge relegating the parties to file an appeal under Section 72 of the Act is concerned, we have to agree with Mr.G.Prabhu Rajadurai that Section 72 of the Act would apply only if a refusal of the document placed in terms of Section 71 of the Act. Section 71 of the Act would apply only if there is a dispute in the identity of the executant and it is not



W.A.(MD)No.1902 of 2023

the case in the present situation. Therefore, the order of the learned Single Judge directing the writ petitioner to file an appeal has rightly been impugned in the present Writ Appeal. Therefore, it has to be interfered with and the same is set aside.

7.It does not put an end to the dispute because as submitted by the learned Special Government Pleader, the 3<sup>rd</sup> respondent had purchased the property on 04.02.2022 and who in turn alienated the property in favour of the 4<sup>th</sup> respondent on 04.08.2022. Under Rule 55-A of the Tamil Nadu Registration Rules (hereinafter referred to as 'the Rules'), if a registration of the document is necessary, the original of the documents by which the executant obtained title over the property would have to be produced.

8.We noticed from the narration of the facts that the 3<sup>rd</sup> respondent has already got sale in his favour on 04.02.2022 and on the strength of that document, he has registered the sale deed in favour of 4<sup>th</sup> respondent on 04.08.2022, which have also been reflected in the encumbrance in Document No.62/2022 and Document No.590/2022. If we apply Section 55-A of the Rules, the appellant would not be in a position to satisfy the requirement of the same.



W.A.(MD)No.1902 of 2023

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9. Apart from that we also have to take note of the fact that the appellant has already presented a suit for declaration of title and recovery of possession in O.S.No.293 of 2022 on the file of the Subordinate Court, Ramanathapuram, wherein written statement has been filed and the matter is ready for framing of issues.

10. In the light of the aforesaid facts, we are in agreement with the learned counsel for the appellant that pendency of the suit is not absolute bar for registration of the document. However, we have to take note of the fact that since the Document No.62/22 and Document No.590/22 have already been registered, the appellant is not in a position to comply with the requirement of Section 55-A of the Rules. Therefore, we are not inclined to grant the relief the appellant seeks for before us.

11. Further, we make it clear that the registration of the document in Document No.62/22 and Document No.590/22 will not create any right in favour of the respondents 3 and 4 and they will have to independently prove their title before the pending suit in O.S.No.293 of 2022 as is the case with reference to the



W.A.(MD)No.1902 of 2023

appellant also. We make it clear that both cannot rely upon the registered document for the purpose of defeating the interest of the appellant, since the dispute has already been pending before the competent civil Court. It is needless to state that the parties to the civil Court have to prove their title de hors the registered document and the civil Court shall consider the issues uninfluenced by the observations made by this Court.

12.With the above observations, this Writ Appeal stands disposed of.

No costs.

**(S.M.S., J.) & (V.L.N., J.)**

**06.11.2023**

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

*Yuva*

To

1.The Joint 1 Sub Registrar,  
Ramanathapuram District, Ramanathapuram.

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

6/7



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W.A.(MD)No.1902 of 2023

**S.M.SUBRAMANIAM, J.**

**AND**

**V.LAKSHMINARAYANAN, J.**

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W.A.(MD)No.1902 of 2023

06.11.2023