



1

W.P.(MD)NO.28200 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.28200 of 2022 and
W.M.P.(MD)Nos.22270, 22271 & 22273 of 2022

1. G.Gokulakannan

2. Duvaragai Krishnan

... Petitioners

Vs.

1. The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai.

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

3. The Tahsildar,
Thiruvadanai Taluk Office,
Thiruvadanai,
Ramanathapuram District.

4. K.Uma

5. Manikandan

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings dated 24.11.2022 under Na.Ka.B4/5750/2021 issued by the 3rd



respondent and to quash the same as illegal consequently directing the 2nd respondent herein to register and release the sale deed dated 26.08.2022 forthwith executed by the petitioners in favour of 5th respondent to the property under Survey No.86/4A1, measuring 20 Acres at Kodivayal Village, Thondi Taluk, Ramanathapuram District.

For Petitioners : Mr.Sricharan Rangarajan,
Senior counsel,
for Mr.K.R.Laxman.

For R-1 to R-3 : Mr.S.Shanmugavel,
Additional Government Pleader.

For R-4 & R-5 : No appearance.

* * *

ORDER

Heard the learned Senior counsel appearing for the writ petitioners and the learned Additional Government Pleader appearing for the official respondents.

2. The contestant, namely, the fourth respondent has been served and her name is printed in the cause list. However, she has not chosen to enter appearance.



3. The case of the writ petitioners is that the petition mentioned property belonged to Thiru.Periyasamy, their grandfather. Periyasamy was blessed with five daughters and two sons (Govindaraj and Karuppiah). The petitioners are the sons of Govindaraj. Periyasamy is said to have executed a registered Will dated 15.11.2019 bequeathing the petition mentioned property in favour of the petitioners. Based on the same, patta has also been changed in their favour.

4. In the meanwhile, the fourth respondent namely, wife of the other son had raised a rival claim in respect of the property on the strength of an unregistered Will dated 07.09.2021 alleged to have been executed by Periyasamy. Periyasamy passed away on 02.02.2022. On the strength of the said unregistered Will, the fourth respondent had filed O.S. No.42 of 2022 on the file of the Principal District Judge, Ramanathapuram, seeking the relief of declaration and permanent injunction in respect of the petition mentioned property. The writ petitioners herein are figuring as defendants 2 and 3. Their father is figuring as the first defendant.



WEB COPY

5. The fourth respondent had also lodged an objection before the third respondent to make changes in the revenue record.

6. The third respondent has sent the impugned communication dated 24.11.2022 calling upon the registering authority (second respondent) not to entertain any document in respect of the petition mentioned property. Since the fourth respondent also lodged an objection before the second respondent, when the petitioners herein presented the said sale deed for registration, the second respondent issued the impugned refusal check slip. In the refusal check slip, the second respondent had stated that in respect of the property in question, there is an unregistered Will, based on which a civil suit has been filed; since the registering authority has been shown as a defendant in the said suit, registration is refused.

7. Challenging the impugned communication issued by the third respondent Tahsildar as well as the impugned refusal



check slip issued by the second respondent Sub Registrar, this writ petition has been filed.

8. The learned Senior counsel appearing for the writ petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petition. He relied on the decision reported in 2021 (2) CTC 526 (***Sivanadiyan V. The Sub Registrar, Pudukottai District***) in support of his contentions. He called upon this Court to set aside the impugned order and grant relief as prayed for.

9. The learned Additional Government Pleader appearing for the official respondents submitted that the impugned order do not call for any interference. He pointed out that the Inspector General of Registration has issued a circular mandating that where the registering authority is a party to any suit, the document pertaining the suit property will not be entertained for the purpose of registration. He called for dismissal of this writ petition.

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



11. Let me consider the validity of the communication dated 24.11.2022 issued by the jurisdictional Tahsildar. It is too well settled that the registering authority is an independent authority governed by the provisions of the Registration Act and rules and instructions issued thereunder. No authority other than ones contemplated under the Registration Act can issue direction calling upon the registering authority not to entertain any document for registration. The impugned communication issued by the third respondent does not cite any statutory provision which authorises her to call upon the registering authority not to entertain any document for registration. It is bereft of jurisdiction and it stands quashed.

12. It is true that the registering authority is figuring as a defendant in the suit instituted by the fourth respondent. But in the said suit, the plaintiff has not obtained any interim order in her favour. If any restraint order issued against the registering authority, then the registering authority cannot entertain any document pertaining to the suit property and not otherwise. In fact the circular bearing Na.Ka.



No.39708/C1/2018 dated 04.10.2018 issued by the Inspector General of Registration is to that effect. It does not read that the registering authority who is shown as defendant in the suit should hold his hands. It is true that the fourth respondent has raised a rival claim. She is anchoring her case on the strength of an unregistered Will. It is for the fourth respondent and the writ petitioner to work out their rights before the jurisdictional civil Court. The registering authority could not have declined to receive the document in question on the ground that title dispute has arisen.

13. A learned Judge of this Court in the decision reported in 2021 (2) CTC 526 (***Sivanadiyan V. The Sub Registrar, Pudukottai District***) held that it is not the function of the registering authority to go into the issue of title. As on date, the revenue record also stands in favour of the writ petitioner. In any event, the rights of the parties including the purchaser from the writ petitioners will abide by the outcome of O.S.No. 42 of 2022 on the file of the Principal District Judge, Ramanathapuram.



WEB COPY

14. In this view of the matter, the orders impugned in this writ petition stand set aside. The petitioners are permitted to re-present the document in question. The second respondent shall receive the same, register it and release it subject to fulfilment of the other usual formalities. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24.01.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai.
2. The Sub Registrar,
Thondi Sub Registrar Office,
Ramanathapuram District.
3. The Tahsildar,
Thiruvadanai Taluk Office,
Thiruvadanai,
Ramanathapuram District.



WEB COPY



9

W.P.(MD)NO.28200 OF 2022

G.R.SWAMINATHAN,J.

PMU

W.P.(MD)No.28200 of 2022

24.01.2023