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W.P.No.852 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2024

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

W.P.No.852 of 2024

S.Senthil Kumar

... Petitioner

Vs.

1. The Sub Registrar,
Mohanur,
Mohanur Taluk,
Namakkal District – 637 015.

2. Marappan

3. Pappayee

4. T.Chellammal

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned Refusal Check Slip in RFL/Mohanur/179/2023 dated 05.12.2023 issued by the first respondent and quash the same with consequential direction directing the first respondent to register the sale deed dated 04.12.2023 executed in favour of the petitioner by the respondents 2 to 4.



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For Petitioner : Mr.S.Senthil
For R1 : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned Refusal Check Slip in RFL/Mohanur/179/2023 dated 05.12.2023 issued by the first respondent and to quash the same and to direct the first respondent to register the sale deed dated 04.12.2023 executed in favour of the petitioner by the respondents 2 to 4.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the official respondent.

3. Learned Counsel for the petitioner submitted that originally the property comprised in S.Nos.49/3A1, 49/3A2, 49/3B1, 49/3B2, 49/3B3,



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49/3C etc., situated in Arur Village, Mohanur Taluk, Nammakkal District owned by one Late.Periyathambi. He purchased the said properties under the registered sale deeds dated 19.05.1977 and 10.07.1977. The said properties are self acquired properties of the said Late Periyathambi. He has got two daughters namely Marayee and Pappayee/R3 and one son namely Thangavel. The said Thangavel died intestate leaving behind his wife, T.Chellammal/R4 and they had no issues. Subsequently the abovesaid Periyathambi died intestate on 15.07.1982, leaving behind his wife P.Chellammal, daughters Marayee, Pappaayee/R3 and the widow of predeceased son, the fourth respondent herein as surviving legal heirs. The said P.Chellamal who is the wife of late Permiyathambi and the two daughters and son of late.Periyathambi each are entitled to $\frac{1}{4}$ share. $\frac{1}{4}$ share of Late.Thangavel will be inherited by his mother P.Chellammal and his wife fourth respondent herein equally. Hence, P.Chellammal is entitled to $\frac{9}{24}$ shares and the daughters Maryaee and the Pappaayee/R3 are entitled to $\frac{6}{24}$ shares each and the fourth respondent is entitled to $\frac{3}{24}$ shares.



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4. At thus juncture, the said P.Chellammal and the third respondent executed a registered joint Will dated 13.12.1988 in favour of the second respondent represented by his guardian mother Marayee with respect to the 9/24 share of P.Chellammal and 6/24 share of the third respondent and the same is registered as Doc.No.47 of 1988 on the file of the Sub Registrar, Mohanur. On 21.08.2005, the said P.Chellamal died and thus the Will pertaining to her 9/24 share came into effect. Subsequently the said Marayee died intestate on 19.08.2008 and her husband also died intestate. Therefore, her son Marappan, the second respondent herein and her daughters Chellammal and Marayee are entitled to her 6/24 share as her legal heirs. Therefore, the second respondent acquires 9/24 share through P.Chellammal by virtue of Will dated 13.12.1988 and 2/24 shares as legal heir to her mother Late.Marayee, the third respondent is entitled to 6/24 shares and the 4th respondent is entitled to 3/24 shares and daughters of Late.Marayee and sisters of 2nd respondent namely Chellammal and Marayee are entitled to 2/24 share each.



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5. Further he submitted that the respondents 2 to 4 executed a sale deed dated 04.12.2023, in favour of the petitioner, with respect to their 20/24 share in common in the subject property for a valuable consideration. The petitioner presented the abovesaid sale deed for registration before the first respondent on 05.12.2023 by paying the prescribed registration fees, stamp duty and other fees. The first respondent refused to register the sale deed for the reason that the Will dated 13.12.1988 was executed by P.Chellammal and the third respondent jointly and since one of the testator, the third respondent herein is still alive, the Will does not come into effect. Hence they have not registered the sale deed. When one of the testator of joint Will died, the part of the Will with regard to the deceased testator come into effect. Therefore the Will in respect of Chellammal has been acted upon pertaining to her 9/24 share. Hence the impugned Refusal Check Slip is liable to be quashed.

6. Since there is no adverse order is passed against the private respondents, notice to the private respondents/ R2 to R4 is dispensed



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with.

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7. Admittedly, the petitioner is claiming title under the joint Will dated 13.12.1988 executed by both Chellammal and Pappayee/third respondent herein. One of the testators, namely the third respondent herein is still alive. It is not stated in the recital of the Will that if one of the testators died, the Will will come into force. In this case, language employed in the Will is that the testators have jointly executed the Will and they can cancel the Will during their life time and the Will has to come into existence only after their life time. As per the recitals of the joint Will, the Will will come into force only after the lifetime of both the testators, hence the Court cannot interpret the intention of the testators, especially the Writ Court cannot interpret the same without any evidence. This Court does not find any illegality or irregularity in the impugned order passed by the first respondent.

8. In view of the above, Writ Petition is dismissed. There shall be no order as to costs.

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Index: Yes/No



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Speaking Order: Yes/No
Neutral Citation: Yes/No

To

The Sub Registrar,
Mohanur,
Mohanur Taluk,
Namakkal District – 637 015.



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P.VELMURUGAN, J.

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