



W.P.No.1820 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 28.02.2024

Orders Pronounced on : 14.06.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.1820 of 2024
and W.M.P.No.1885 of 2024

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Mr.G.Ramesh

.. Petitioner

Vs.

1. The Deputy Inspector General of Registration,
Integrated Building for Offices of the
Commercial Taxes and Registration Department,
Fanepet,
Nandanam, Chennai-600 035.

2. Mr.Vittabai

3. Mr.Murali Krishnan

4. Mrs.Gunasundari

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to Na.Ka.No.4319/B1/2022, dated 25.09.2023 issued by the first respondent and quash the same.

For petitioner : Mr.J.Venkatesan

For respondents: Mr.B.Vijay, Addl.G.P. for R-1

Mr.Nirmal Raj for RR-2 to 4



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W.P.No.182 of 2023

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records relating to Na.Ka.No.4319/B1/2022, dated 25.09.2023 issued by the first respondent and quash the same.

2. Originally, one Mr.Govinda Reddy, the father of the petitioner, was the owner of 1 acre 40 cents of land comprised in Survey No.202/1 of Kanapalayam Village, having acquired the same from his ancestor. Mr.Govinda Reddy sold 23 cents out of 1 acre 40 cents in Survey No.202/1 to his father-in-law Mr.Jagannatha Reddy. Since there was mistake in the sale deed in reference to the survey number, a rectification deed was registered on 22.11.1979. Pursuant to the sale of 23 cents, Mr.Govinda Reddy has remaining 1 acre 17 cents. Further, UDR scheme reflected Patta No.464 for the said property in the joint name of Mr.Govinda Reddy and Mr.Jagannatha Reddy. After the demise of the said Govinda Reddy, his legal heirs, viz., his wife Mrs.Rani, his daughters--Mrs.Santha, Mrs.Vijaya, Mrs.Kalyani, Mrs.Gomala and his sons--Mr.Ramamurthy, Mr.Ramesh (petitioner herein), Mr.Gopal and Mr.Krishnamoorthy continued to enjoy the possession of the said land and were doing agriculture in the same. The said Mr.Jagannatha Reddy died intestate, leaving behind the legal heirs, viz.,



Mrs.Rani (mother of the petitioner), Mrs.Vittabai (second respondent herein), Mr.Sampath Reddy, Mr.Haridas to succeed to his 23 cents in Survey No.202/1 of Kanapallayam Village. Thus, the petitioner, along with his mother and siblings were entitled to 1 acre 17 cents that they have inherited from their father Mr.Govinda Reddy. Apart from that, Mrs.Rani is entitled for 1/4 share in 23 cents, i.e. 5.75 cents inherited from her father Mr.Jagannatha Reddy. Since the petitioner, his mother and siblings were getting 1 acre 22.75 cents out of 1 acre 40 cents, the other legal heirs of late Jagannatha Reddy developed enmity by jealousy and started to act against the interest of Mrs.Rani and indulged in all sorts of illegal activities.

3. While that being so, the petitioner, along with his mother and siblings, for want of fund, had to mortgage the said property. However when the document is presented for registration, the Sub-Registrar, Office of the SRO, Kunrathur, refused to entertain saying that they do not have a separate Patta and only joint Patta and as such, by presumption, the petitioner, along with his mother and sibling, would be entitled to mortgage only 50% of the said land, which is 70 cents out of 1 acre 40 cents and a mortgage deed dated 07.09.2020 was registered on the file of the SRO, Kunrathur, vide Doc.No.9301/2020 in favour of one Mr.Senthil.

4. In the meantime, Mrs.Vittabai, the second respondent herein, daughter of the late Jagannatha Reddy, had filed a compliant to the District Registrar, Chennai South



and the same was dismissed, against which, the second respondent along with 2 others, who were not party to the earlier proceedings, had preferred appeal before the first respondent. By that time, the second respondent seems to have made a representation to the Tahsildar, Poonamallee to cancel the mortgage deed, dated 07.09.2020 registered on the file of the SRO, Kunrathur, vide Doc.No.9301/2020. Though the Tahsildar had no authority to cancel a document registered by the SRO, the Tahsildar, instead of returning the petition, had cancelled the Patta which stood in the name of Mr.Jagannatha Reddy and Mr.Govinda Reddy for the reasons best known to him, as against which, an appeal was preferred by the petitioner and his family before the Revenue Divisional Officer, Thiruvallur on 26.10.2021, which is pending and the enquiry is yet to commence.

5. The petitioner, along with his family members, attended the hearing before the first respondent and submitted all supporting documents. However, the petitioner received the impugned order of the first respondent, cancelling the said mortgage deed dated 07.09.2020, as against which, the petitioner has preferred the present Writ Petition.

6. The first respondent has filed counter affidavit stating that the writ petition is not maintainable either in law or on facts and may be dismissed in-limine. Mr.Jegannatha Reddy obtained the property measuring 1 acre and 17 cents comprised in



S.No.202/1, Kannapalayam Village, Poonamallee Taluk, Thiruvallur District, by way of sale deed, vide Document No.2633/1970 on the file of the SRO, Poonamallee. The said Mr.Jegannatha Reddy has also obtained the property measuring 23 cents comprised in S.No.202/1, Kannapalayam Village, Poonamallee Taluk, Thiruvallur District, by way of sale deed, vide Document No.44/1979 on the file of the SRO, Poonamallee. Further, a rectification deed in Doc.No.3952/1979 was registered before the SRO, Poonamallee stating that there has been an error in Survey Number in the Document No.44/1979, which has been rectified as 202/1 instead of 201/1. The said Jagannatha Reddy died intestate on 14.03.2020, leaving behind Raniammal (petitioner's mother), Sampath Reddy and Haridass (late father of the third respondent herein) as his legal heirs. The said Raniammal, i.e. the petitioner's mother executed a mortgage deed, vide Doc.No.9301/2020 stating that the property measuring an extent of 1 acre 40 cents, comprised in S.No.202/1, Kannapalayam Village, is an ancestral property, which belongs to her father Mr.Jegannatha Reddy and her husband Mr.Govindaraja Reddy, i.e. the father of the petitioner and they have produced Patta No.464 as a proof of registering the property.

7. It is also stated in the counter that the second respondent gave a representation before the Tahsildar, Poonamallee for removal of the name of Mr.Govindaraja Reddy from Patta No.464 and after conducting enquiry, the Tahsildar issued proceedings in



Na.Ka.No.2110/2020/A2, dated 28.09.2021 removing the name of the petitioner's father from the said Patta No.464. The second respondent gave a representation under Section 68(2) of the Registration Act, before the District Registrar, Chennai South for cancellation of fraudulent document, viz., mortgage deed Doc.No.9301/2020 on the file of the SRO, Kundrathur and to make entry in the Index-II of the Encumbrance Certificate. Based on the complaint of the second respondent, the District Registrar, Chennai South has conducted an enquiry and dismissed the petition stating that she cannot go into the issue of deciding the title. Aggrieved by the order passed by the District Registrar, the second respondent preferred an appeal before the first respondent under Section 68(2) of the Registration Act, based on which, the first respondent conducted enquiry and found that Mrs.Raniammal, i.e. petitioner's mother has only 1/4 share in the property comprised in S.No.202/1, measuring an extent of 1 acre 40 cents situated at Kannapalayam Village. But the said Mrs.Raniammal, i.e. petitioner's mother fraudulently executed a mortgage deed, vide Doc.No.9301 of 2020 by stating that it is an ancestral property.

8. Upon conducting enquiry, the first respondent has passed the following orders:

(i) By declaring Doc.No.9301/2020 as fraudulent and also directing the Sub-Registrar to make an entry in the fraudulent document and also directed to make appropriate note in Index-II of the Encumbrance Certificate and not to entertain any



further documents basis on the fraudulent document.

(ii) by directing the Sub-Registrar to make a note in the separate sheet and directs him to scan and upload it as link document.

(iii) by directing the Sub-Registrar to make a complaint to the Police Department to take appropriate action against the parties under Section 83 of the Registration Act.

9. It is further stated in the counter that Mrs.Raniammal, i.e. petitioner's mother has only 1/4 share in the property comprised in S.No.202/1 measuring an extent of 1 acre 40 cents situated at Kannapalayam Village. But Mrs.Raniammal, i.e petitioner's mother has fraudulently executed a mortgage deed, vide Doc.No.9301/2020 by stating that it is an ancestral property. The first respondent has declared Doc.No.9301/2020 as fraudulent based on the legal heirship certificate and proceedings of the Tahsildar, Poonamallee produced by the second respondent. For all the above reasons, the first respondent prayed to dismiss the Writ Petition.

10. Learned counsel appearing for the petitioner submitted that the petitioner submitted that the petitioner's father is the owner of the property in total extent of 1 acre 40 cents in S.No.202/1 of Kanapalayam Village. The father of the petitioner sold only 23 cents out of 1 acre 40 cents in S.No.202/1 to his father-in-law Mr.Jagannatha Reddy. Since there was a mistake, they have also executed rectification deed on 22.11.1979 and



instead of 23 cents in S.No.202/1 in the said village. Subsequently, Govinda Reddy being the father of the petitioner, left behind the petitioner and his mother and also the other legal heirs. The said Jagannatha Reddy also died, leaving behind the legal heirs and the wife of the petitioner is none other than one of the daughters of the said deceased Jagannatha Reddy. Therefore, the petitioner's family is entitled to 1 acre 17 cents in S.No.202/1 of Kannapalayam Village and since the daughter of Jagannatha Reddy and the wife of the petitioner, being the legal heirs of the said Jagannatha Reddy, are entitled to $\frac{1}{4}$ share in 23 cents in S.No.202/1 in the said Village. Therefore, totally, the petitioner's family is entitled to 5.75 cents out of 1 acre 40 cents in S.No.202/1 in Kannapalayam Village. Since the family of the petitioner is in need of funds, they have borrowed money and executed mortgage deed as security. At the time, the Sub-Registrar of Kundrathur, refused to entertain the entire 1 acre and 22.75 cents and since Jagannatha Reddy purchased 23 cents, a joint Patta was issued in the name of Govinda Reddy being the father of the petitioner and Jagannatha Reddy, being the father-in-law of the petitioner. Since there was joint Patta, the Sub-Registrar registered only 50% of the land(s) in question, which is 70 cents out of 1 acre 40 cents in favour of one Senthil on 07.09.2020. Thereafter, the second respondent gave a complaint before the Sub-Registrar that as if the petitioner's family fraudulently executed a mortgage deed and the Sub-Registrar, on seeing the matter, dismissed the said complaint, and therefore, the



second respondent filed appeal before the first respondent, who set aside the order of the Sub-Registrar and passed the impugned order, against which, the present Writ Petition has been filed by the petitioner.

11. Learned counsel for the petitioner further submitted that the second respondent filed a complaint to the District Registrar, Chennai South and the said complaint was dismissed, against which, the second respondent, along with two others, who were not party to the earlier proceedings, preferred appeal before the first respondent and in the meantime, the second respondent seems to have made a representation to the Tahsildar, Poonamallee to cancel the mortgage deed, dated 07.09.2020 registered on the file of the SRO, Kundrathur. Though the Tahsildar had no authority to cancel a document registered by the SRO, the Tahsildar, instead of returning the petition, cancelled the Patta which stood in the name of Mr.Jagannatha Reddy and Mr.Govinda Reddy, against which the petitioner and his family preferred appeal before the Revenue Divisional Officer, Thiruvallur, and the said appeal is stated to have been pending. Subsequently, the petitioner received the impugned order, dated 25.09.2023 passed by the first respondent, cancelling the mortgage deed, dated 07.09.2020 and as against the impugned order, the petitioner has preferred the present Writ Petition.

12. Learned counsel for the petitioner further contended that the second



respondent stated that the property in S.No.202/1 also pertains to the same village and the said property in S.No.202/1 also belongs to her father--Jagannatha Reddy, whereas in respect of the documents produced by the second respondent before the Sub-Registrar, a wrong complaint was made against the petitioner and it shows that the Jagannatha Reddy purchased the property against one Duraisamy Reddy and others in respect of 1 acre and 17 cents in S.No.201/1 in Kannapalayam Village and not in S.No.202/1. What the said Jagannatha Reddy purchased the property in S.No.202/1 in Kannapalayam Village is 23 cents alone from the father of the petitioner, but the Tahsildar, without looking into the same, cancelled the Patta and the first respondent, without perusing the document and considering the facts, set aside the order of the District Registrar and passed the impugned order, which is liable to be set aside.

13. Learned counsel for the respondents 2 to 4 submitted that the property in S.No.202/1 of Kannapalayam Village, Poonamallee Taluk, Tiruvallur District, with a total extent of 1 acre and 40 cents, belongs to the father of the second respondent, i.e. Jagannatha Reddy, who died intestate leaving behind the legal heirs and the respondents 3 to 5 are the legal heirs along with the wife of the petitioner, i.e. Rani Ammal. The wife of the petitioner is entitled to only $\frac{1}{4}$ share in the property of the said Jagannatha Reddy of an extent of 1 acre and 40 cents, but they have suppressed the same and they have mortgaged 50% of the property in S.No.202 and therefore, they have filed a



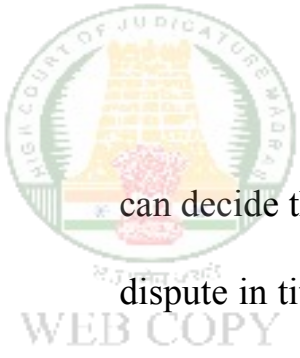
complaint before the District Registrar, who failed to consider the same and dismissed the complaint, against which, they have filed appeal before the first respondent, who rightly appreciated and passed the impugned order.

14. Heard both sides and perused the materials available on record.

15. The case of the petitioner is that the property in question of an extent of 1 acre 40 cents in Survey No.202/1 of Kannapalayam Village, belongs to the petitioner's family, and the father of the petitioner sold only 23 cents out of the said extent in favour of one Jagannatha Reddy who is none other than the petitioner's father-in-law. Since there was a mistake in the sale deed with reference to the survey number, a rectification deed was registered on 22.11.1979. As per the sale deed dated 15.10.1970 executed in favour of Jagannatha Reddy by Duraisamy, and the rectification deed dated 22.11.1979, the said Jagannatha Reddy is the owner of the property of 23 cents in S.No.202/1 of Kannipalayam Village. Though the private respondents have stated that the said Jagannatha Reddy is the owner of the property of 1 acre and 40 cents in S.No.202/1 in Kannipalayam Village, they have not produced any document to prove the same. The petitioner has produced the documents like sale deed dated 15.10.1970 executed in favour of Jagannatha Reddy, who had purchased the property in question from Duraisamy and others. The sale deed dated 15.10.1970 pertaining to 1 acre and 40 cents in S.No.202/1 of Kannipalayam Village is actually not pertaining to S.No.202/1 and it



pertains actually to S.No.201/1 and the father of the petitioner, i.e. Govinda Reddy sold 23 cents out of 1 acre and 40 cents to his father-in-law Jagannatha Reddy. It is stated by the petitioner that due to want of funds, the petitioner, along with his mother and siblings, had to mortgage the property in question in favour of one Senthil, of an extent of 70 cents out of 1 acre and 40 cents by executing mortgage deed dated 07.09.2020 in S.No.202/1 and not in S.No.201/1. Therefore, when the petitioner has been vested with the title stating that the property in question is an ancestral property through Govinda Reddy, who sold 23 cents to Jagannatha Reddy and the petitioner is having 1 acre 17 cents in S.No.202/1 and they have mortgaged the property in question. Though the petitioners have stated that the said Jagannatha Reddy purchased the property in the year 1970, but however, the sale deed dated 15.10.1970 (a copy is annexed in the typed set of papers filed along with the Writ Petition) executed by Duraisamy in favour of Jagannatha Reddy shows that the survey number is only 201/1 and 1 acre 40 cents was purchased by Jagannatha Reddy and not from Govinda Reddy. The property in question was purchased from one Duraisamy and others by Jagannatha Reddy and therefore, the contention of the private respondents is not acceptable and if at all the private respondents have got any right in S.No.202/1 in Kannipalayam Village, over and above 23 cents, they should have filed a suit before the Civil Court for declaration of their title and also for cancellation of the mortgage deed. Neither the Tahsildar, nor the Registrar,



can decide the title in respect of the parties. If there is any cloud in title or if there is any dispute in title, and as the same is civil nature, it can be decided only by the Civil Court and not the Writ Court. Therefore, the first respondent, without looking into the matter and without properly verifying the documents in question, has passed the impugned order. If at all the first respondent has got any doubt in title or felt that there is a cloud in the title, he ought to have directed the parties to approach the Civil Court.

16. Hence, on a reading of the entire materials available on record and considering the facts and circumstances of the case, it is clear that the private respondents herein have not produced any title deeds in favour of Jagannatha Reddy in respect of 1 acre and 40 cents in S.No.202/1. Therefore, as contended by the petitioner, and on a perusal of the sale deed dated 15.10.1970 executed by Duraisamy and others in favour of the said Jagannatha Reddy, it is clear that the property in question comprises of S.No.201/1 in Kannipalayam Village and not S.No.202/1. Further, the sale deed dated 05.02.1978 executed by Govinnda Reddy in favour of Jagannatha Reddy also shows that the survey number is 201/1 pertaining to 1 acre 40 cents and out of the same, only 23 cents were sold and subsequently, a rectification deed was executed on 22.11.1979, rectifying the survey number from 201/1 to 202/1.

17. Therefore, on a combined reading of the sale deed dated 15.10.1970, sale deed dated 05.02.1978 and the rectification deed, dated 22.11.1979 and also the



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mortgage deed dated 07.09.2020, shows that the private respondents have not proved and established that the petitioner has mortgaged the property in S.No.201/1 of Kannipalayam Village and the private respondents are entitled to only $\frac{3}{4}$ share and the petitioner's family is entitled to 50% of their share which had been mortgaged and these facts have been suppressed by the private respondents herein and the private respondents have not also proved with regard to the dispute in the survey number.

18. In the above circumstances, there is cloud in title in respect of the property in question and hence the parties concerned only have to approach the Civil Court. On a entire perusal of the materials available on record, this Court is of the view that the impugned order is liable to be set aside.

19. Accordingly, the impugned order is set aside. The Writ Petition is allowed. However, the private respondents herein are at liberty to work out their remedy before the Civil Court in the manner known to law. There shall be no order as to costs. Consequently, the miscellaneous petition is closed.

14.06.2024

Index: Yes/no
Speaking Order: Yes/no
Neutral Case Citation: Yes/no
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W.P.No.182 of 2022

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The Deputy Inspector General of Registration,
Integrated Building for Offices of the
Commercial Taxes and Registration Department,
Fanepet, Nandanam, Chennai-600 035.



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W.P.No.1820 of 2024

P.VELMURUGAN, J

CS

Pre-delivery Order
in W.P.No.1820 of 2024

Order Pronounced
on 14.06.2024