IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.16979 of 2024
and
W.M.P.No.18705 of 2024

B.Appakutty ... Petitioner

vs.

1.The District Collector,
Collectorate
Krishnagiri – 635115

2.The District Revenue Officer,
Collectorate
Krishnagiri – 635115

3.The Revenue Divisional Officer,
Collectorate
Krishnagiri – 635115

4.The Tahsildar,
Bargur,
Krishnagiri District

5.Raja ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records of the impugned order dated 29.05.2024 passed by the 3rd Respondent bearing number P.M.3761/2023/A and quash the same as illegal and unconstitutional and consequently the 4th Respondent to restore the Patta Nos.3701 and 3702 in the name of the Petitioner.

For Petitioner	: Mrs.Rohini Ravikumar
For R1 to R4	: Mr.Arasakumar Government Advocate
For R5	: Mr.M.Suresh

ORDER

The Writ Petition is filed challenging the order passed by the 3rd respondent cancelling patta issued in the name of petitioner on the ground that Sale Deed in favour of the petitioner dated 22.08.2016 was cancelled by District Registrar, Thirupattur District, by his order dated 18.04.2023 while exercising power under Section 77A of Registration Act, 1908.

2. According to the petitioner, the subject property originally belonged to one Venkatammal and she having purchased the same under a registered Sale Deed dated 09.03.1970. The said Venkatammal executed a Will dated 22.02.1953 in faovur of her daughter-in-law Kuruvammal. Subsequently, the said Kuruvammal executed two Settlement Deeds dated 23.04.1986 in favour of her son the 5th respondent herein and her grandson namely Master Srinivasan represented by his mother Shymala. Thus, the subject property was jointly owned by 5th respondent and his minor son Srinivasan. The 5th respondent and his minor son Srinivasan represented by his mother Shymala executed a Power of Attorney dated 30.09.2015 appointing one V.Subash as Power Agent to deal with subject property. The petitioner purchased the subject property under a registered Sale Deed dated 22.08.2016 from 5th respondent and his minor son Srinivasan represented by their Power Agent-V.Subash. Thus, the petitioner herein claims right over the subject property.

3. The 5th respondent herein filed an application before the District Registrar, Thirupattur stating that his son Srinivasan died as early as

16.03.2016, suppressing the same, Sale Deed was executed by Power Agent-V.Subash in favour of the petitioner on 22.08.2016. Therefore, the District Registrar, Thirupattur by exercising his power under Section 77A of the Registration Act, 1908 cancelled the Sale Deed executed in favour of the petitioner by order dated 18.04.2023 mainly on the ground that one of the principals namely Master Srinivasan was not alive on the date of Sale Deed. Aggrieved by the same, the petitioner said to have filed an appeal before the Inspector General of Registration and the same is pending. The petitioner also filed a suit in O.S.No.12 of 2023 before the District Court, Krishnagiri seeking relief of declaration of the validity of the Sale Deeds and permanent injunction. The petitioner is the 1st plaintiff in the said suit and the plaintiffs 2 and 3 therein are the purchasers from the petitioner herein.

4. Thereafter, the 5th respondent filed an application before the 3rd respondent seeking cancellation of patta issued in the name of petitioner based on the Sale Deed cancelled by the proceedings of District Registrar, Thirupattur. The 3rd respondent after enquiry by impugned order dated 29.05.2024 cancelled the patta issued in favour of the petitioner mainly on the ground that Sale Deed in favour of petitioner was cancelled by the

District Registrar, Thirupattur in his order dated 18.04.2023. Aggrieved by the same, the petitioner is before this Court.

5. The learned counsel appearing for the petitioner submitted that Section 77A of the Registration Act, 1908 has been struck down by the Division Bench of this Court in ***M.Kathirvel vs. The Inspector General of Registration*** (W.P.No.10291 of 2022 etc., batch, dated 02.08.2024). Therefore, the order passed by the District Registrar, Thirupattur by invoking Section 77A of Registration Act, will not affect the title of the petitioner.

6. The learned counsel further submitted that once the order cancelling the Sale Deed in favour of the petitioner is rendered invalid by the order passed by the Division Bench of this Court, the consequential impugned order passed by the 3rd respondent cancelling patta issued in the name of petitioner is also liable to be set aside. The learned counsel also submitted that the petitioner and the persons who purchased the property from petitioners jointly filed a suit in O.S.No.12 of 2023 before the District Court, Krishnagiri for declaration that Sale Deed dated 22.08.2016 is a valid

document and the same will bind the defendants therein namely 5th respondent and his wife Shymala and for consequential injunction restraining the defendants therein from interfering with his possession and the said suit is pending. The learned counsel further submitted that when the title dispute is pending before the Civil Court, the authorities ought not to have passed the impugned order cancelling the patta in his favour.

7. The learned Government Advocate appearing for the respondents 1 to 4 would submit that when the sale deed was executed in favour of the petitioner by Power Agent-V.Subash, one of his principals minor Srinivasan was not alive. Therefore, the District Registrar, Thirupattur rightly exercising power under Section 77A of the Registration Act, cancelled the sale deed in favour of the petitioner and in such circumstances, the 3rd respondent was justified in cancelling the patta, which was issued based on the cancelled sale deed.

8. The learned counsel appearing for the 5th respondent would submit that the petitioner and Power Agent V.Subash produced bogus life certificate before the Sub-Registrar and got the Sale Deed executed after

death of one of the Principals namely minor son-Srinivasan. Therefore, the Sale in favour of the petitioner is invalid.

9. As far as the contention raised by the 5th respondent that sale in favour of the petitioner is invalid is concerned, sale in favour of the petitioner was executed by 5th respondent and his minor son-Srinivasan represented by their Power Agent-V.Subash. It is not in dispute that minor son-Srinivasan died even prior to execution of Sale Deed. Therefore, the Sale Deed in favour of the petitioner can be treated as void only to the extent of share of minor son-Srinivasan and the Sale Deed is perfectly valid as far as the share of 5th respondent is concerned. Therefore, the District Registrar, Thirupattur ought not to have cancelled the entire Sale Deed on the ground that one of the principals namely minor son-Srinivasan died prior to the execution of Sale Deed. In any event sale in favour of petitioner to the extent of 5th respondent's share appear to be valid and hence, District Registrar ought not to have cancelled entire sale deed. For the same reason, the impugned order cancelling patta based on District Registrar's order is also erroneous. Even if sale is invalid to the extent of share of deceased, petitioner is entitled to half share of 5th respondent which was sold to

petitioner under the very same sale deed. Hence, the petitioner becomes a co-owner and entitled to atleast joint patta. Hence, entire patta cannot be cancelled. It is also brought to the notice of this Court the District Registrar by exercising power under Section 77A of the Registration Act, 1908, cancelled the Sale Deed in favour of the petitioner.

10. The Division Bench of this Court in ***M.Kathirvel*** case cited supra, struck down Section 77A of the Registration Act, 1908 and hence, any order passed by District Registrar by exercising power under Section 77A is also liable to be set aside.

11. Once we come to the conclusion that the order passed by the District Registrar, Thirupattur cancelling the Sale Deed in favour of the petitioner is not legally tenable in view of the order passed by the Division Bench of this Court in the above mentioned case law, the impugned consequential order cancelling patta based on the order passed by District Registrar should also be set aside.

12. Accordingly, the petitioner is entitled to the relief prayed in this writ petition. It is also made clear that the petitioner already filed a civil suit for a declaration that Sale Deed dated 22.08.2016 executed in his favour is valid and binding on the 5th respondent and his wife. It is not in dispute that minor son-Srinivasan died prior to execution of Sale Deed in favour of the petitioner.

13. The validity or otherwise of the Sale Deed executed in favour of the petitioner is subject matter of the dispute in O.S.No.12 of 2023 on the file of the District Court, Krishnagiri. Till the validity of the Sale Deed executed in favour of the petitioner is decided by the competent Civil Court, the respondents 1 to 4 shall maintain *status quo* of the revenue records that prevailed prior to the passing of impugned order. It is made clear that any observation made by this Court while disposing of this writ petition will not affect the rights of either the petitioner or the 5th respondent herein in a pending civil suit. Both the parties are given liberty to workout their remedy in the pending civil litigation.

14. With this observation, the impugned order passed by the 3rd respondent dated 29.05.2024 is set aside and the Writ Petition stands allowed. No costs. Consequently, the connected writ miscellaneous petition is closed.

04.09.2024

Index : Yes/No
Speaking order:Yes/No
Neutral Citation:Yes/No
dm

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S.SOUNTHAR, J.

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