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W.P. No.35413 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P. No.35413 of 2023 and
W.M.P. No.35371 of 2023

A.Padma

... Petitioner

Vs.

1. The District Registrar (Administration)
Salem (West), Salem

2. The Sub Registrar,
Sooramangalam, Salem

3. K.M.Ulaganambi

... 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 records with respect of the impugned proceedings of the 1st respondent in Na.Ka.No.2295/E4/E6/2023 dated 28.08.2023 and quash the same consequently directing the 1st respondent to cancel the sale deed document dated 30.11.2010, registered before the 2nd respondent in Document No.8859 of 2010, within a reasonable time as fixed by this Court.

For Petitioners : Mr.R.Nalliyappan

For R1 and R2 : Mr.P.Sathish
Additional Government Pleader



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ORDER

This Writ Petition is filed seeking a Writ of Certiorarified Mandamus to call for the records with respect of the impugned proceedings of the 1st respondent in Na.Ka.No.2295/E4/E6/2023 dated 28.08.2023 and quash the same consequently directing the 1st respondent to cancel the sale deed document dated 30.11.2010, registered before the 2nd respondent in Document No.8859 of 2010, within a reasonable time as may be fixed by this Court.

2. The learned counsel for the petitioner submitted that the father of the petitioner executed a settlement deed infavour of the petitioner for the property comprised in SF No.39/2B2 of Narasothipatti Village to an extent of 17 cents. One Alagiri filed a suit for specific performance against the petitioner and her father in O.S.No.153 of 2006 on the file of the Sub Judge, Salem, based on an fabricated sale agreement and managed to get an ex-parte decree on 20.02.2007 pursuant to which, the said Alagiri made over his right on the said ex-parte decree in favour of the 3rd respondent and based on the ex-parte decree, the 3rd respondent filed an execution application and



subsequently, the Executing Court executed a sale deed in favour of the 3rd respondent. The said sale deed was also registered before the 2nd respondent.

Thereafter, the said ex-parte decree was set aside and the suit was heard on merits and after trial, the suit was dismissed. Against which, the 3rd respondent filed an appeal in A.S.No.30 of 2016 and the appellate Court also dismissed the appeal by judgment and decree dated 28.03.2019. Aggrieved by the same, the 3rd respondent filed a Second Appeal in SA.SR.No.12994 of 2019. However, he had not taken steps to number the same for the reasons best known to him. Hence, the petitioner approached the 1st respondent to cancel the sale deed executed in favour of the 3rd respondent which was registered before the 2nd respondent based on the the ex-parte decree. The 1st respondent, vide his proceedings dated 28.08.2023, passed the impugned order rejecting the claim of the petitioner holding that the 1st respondent has no jurisdiction to cancel the said document and further, the appeal in SA.SR.No.12994 of 2019 is pending before this Court, which is under challenge before this Court.

3. Mr.P.Sathish, learned Additional Government Pleader, takes notice for the respondents 1 and 2.



4. Since there is no adverse order is to be passed by this Court against the 3rd respondent, notice to the 3rd respondent is dispensed with.

5. Heard and perused the materials available on record.

6. Admittedly, the disputed document was registered before the 2nd respondent based on the ex-parte decree. Subsequently, the said ex-parte decree was set aside and the trial Court, after hearing the suit, dismissed the same on merits. Against the dismissal of the suit, an appeal was filed and the same was also dismissed which means, the setting aside of the ex-parte decree is confirmed by the lower appellate Court and as on date, there is no decree at all. Therefore, the disputed document registered with the 2nd respondent is without any right and title. However, when a document is registered through Court based on an ex-parte decree and subsequently, when the ex-parte decree is set aside, then the said document has to be cancelled through Court only.

7. The petitioner ought to have approached the Court which executed



the Sale Deed in favour of the 3rd respondent based on the ex-parte decree and communicated the same to the Registrar to register the said document, for the cancellation of the said document, whereas, the petitioner, instead of approaching the said Court, he has approached the 1st respondent. Though the 1st respondent rejected the claim of the petitioner, as stated above, the petitioner can approach the Court which executed the Sale Deed based on the ex-parte decree and work out his remedy in the manner known to law.

8. With the above observations, this Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

02.01.2024

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Index : Yes / No

Neutral Citation Case : Yes/No



To

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Salem (West), Salem
2. The Sub Registrar,
Sooramangalam, Salem

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P.VELMURUGAN. J.

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