



W.P.(MD)No.4286 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.4286 of 2023

and

W.M.P.(MD)No.4055 of 2023

1. P.K.Mercy Bai
2. A.Kumaradhas

... Petitioners

versus

1. The Inspector General of Registration,
100, Santhome High Road,
Raja Annamalaipuram,
Chennai – 600 028.
2. The Deputy Inspector General of Registration
Integrated Complex of Registration Department,
St. Marks Street, Near Sankaran Colony
Behind John Higher Secondary School
Tirunelveli District – 627 002.
3. The District Registrar (Administration)
Integrated Complex of Registration Department,
24/169, Vettumani, Marthandam,
Kanyakumari District – 629 165.
4. The Sub Registrar Joint II
Joint II Sub-Registrar Office,
Integrated Complex of Registration Department,
24/169, Vettumani, Marthandam,
Kanyakumari District – 629 165.



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5. A.Gnanadas

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the 3rd respondent/the District Registrar, in Ref.No.2262/J/2022 dated 10.08.2022 and quash the same as illegal and void.

For Petitioners : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chamber

For R1 to R4 : Mr.C.Satheesh,
Government Advocate (Crl. Side)

For R5 : Mr.R.Murugappan

ORDER

This writ petition is filed as against the order passed by the 3rd respondent/the District Registrar, in Ref.No.2262/J/2022 dated 10.08.2022.

2. The 2nd petitioner is the husband of the first petitioner. The 2nd petitioner's father, namely, late Ambrose, owned the lands to an extent of 1 acre and 30 ½ cents in an around Pacode Village of Kanyakumari District in various survey numbers. After his demise, the 2nd petitioner and his brother, namely, the 5th respondent herein, based on an oral partition in the year 1980, have been possessing and enjoying their respective shares. In the year 2002, the 2nd



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petitioner has settled his share in favour of the first petitioner, vide Document No.622/2002. Thereafter, in order to meet out the medical expenses, the first petitioner sold out some portion of the property to five persons from the year 2013 to 2015. Again, she sold another portion of the property to an extent of 9 cents in favour of one David, vide Document No.2483/2019 dated 19.08.2019. While so, the 5th respondent gave a complaint to the 3rd respondent on 17.09.2019, alleging that the subject property is the undivided joint family property, but, the 2nd petitioner has executed a settlement document in Doc.No. 622/2002 in favour of his wife in a fraudulent manner and based on the settlement, she sold the property to six persons and therefore, he sought for cancellation of all documents. Based on the said complaint, the 3rd respondent passed an order on 15.02.2022, holding that the Document No.622 of 2002 is a fraudulent document and therefore, subsequent registration of documents in pursuant to the said document are liable to be cancelled. Challenging the same, the petitioners have filed W.P.(MD)No.8175 of 2022. This Court, by order dated 26.04.2022, allowed the writ petition by quashing the impugned order passed by the 3rd respondent dated 15.02.2022 and remitted the matter back to the 3rd respondent for fresh consideration. Thereafter, the 3rd respondent has passed the impugned order dated 10.08.2022, holding that without partition, no

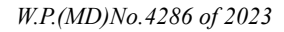


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one is entitled to transfer the property to another person and also ordered for enquiry under Section 83 of the Registration Act. Challenging the same, the present writ petition has been filed.

3. Heard the learned counsel appearing for the petitioners, the learned Government Advocate and the learned counsel appearing for the 5th respondent.

4. The registering authority has no power to go into the title of the property. Further, there is no legal bar to deal with the undivided share. Whether the property in dispute has been partitioned or not, is a matter of fact to be established in the manner known to law. But, the 3rd respondent, without any evidence and without any foundational facts, has passed the impugned order dated 10.08.2022, holding that the the document No.622/2002 executed in favour of the 1st petitioner is liable to be cancelled and the subsequent documents registered based on the Document No.622/2002 are also liable to be cancelled, which clearly shows his non-application of mind. Further, such findings cannot be recorded only based on the allegations made by the 5th respondent. Therefore, the impugned order dated 10.08.2022 is liable to be set aside.



29.08.2024

To

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