



W.P(MD)No.8650 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.03.2024

Delivered on : 27.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.8650 of 2021

S.Atchya

... Petitioner

Vs.

1.The District Registrar (Admin),
Registration Department,
Theni District.

2.The Sub Registrar,
Theni, Theni District.

3.Mythili

4.V.T.Narayanasamy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order, dated 10.12.2020 issued by the first respondent and quash the same as it is illegal and in consequence, to direct the first respondent to initiate action against the respondents 3 and 4 as per Section 83 of the Registration Act, 1908.



W.P(MD)No.8650 of 2021

WEB COPY

For Petitioner : Mr.R.Suriyanarayanan

For Respondents : Mr.S.R.A.Ramachandran,
Additional Government Pleader,
for R1 and R2.

: Mr.C.Jeganathan, for R3 & R4.

ORDER

The Writ Petition is directed against the order, dated 10.12.2020 passed by the first respondent and for direction to the first respondent to initiate action against the respondents 3 and 4 under Section 83 of the Registration Act.

2. It is not in dispute that the property now in dispute and other properties were owned by Rajarathinam and his brother Thonthiraj; that the said Rajarathinam died on 29.06.1999 leaving behind his wife Seethalakshmi, daughters Mythili, Sorubarani, Jhansirani and one son Kannan; that the said Kannan died leaving behind his wife Poornima and minor daughter Oviya and that the petitioner Atchya is the daughter of Sorubarani.



W.P(MD)No.8650 of 2021

WEB COPY

3. It is also not in dispute that the said Latha daughter of Rajarathinam has filed a suit claiming partition against other legal representatives of his father Rajarathinam and the legal representatives of the deceased Thonthiraj and after full trial, the learned Additional District Judge, Theni has passed a preliminary decree, dated 03.11.2018, declaring that the plaintiff Latha was entitled to get 7/72 shares and also permanent injunction restraining the defendants from alienating or encumbering the suit properities and from changing patta or from making sub divisions in respect of the suit properties and that the 18th defendant Narayanasamy aggrieved by the preliminary decree, has preferred an appeal in A.S(MD).No.74 of 2019 and the same was pending on the file of this Court.

4. The case of the petitioner is that her mother's sister Latha has executed a registered Will, dated 31.01.2005 bequeathing her share in the joint family properities in favour of the petitioner; that her aunt Latha died on 28.11.2019, during the pendency of the appeal in A.S(MD)No.74 of 2019 and as such, the Will came into force and she has become the owner of the share of her aunt Latha; that she has already filed a memo before this Court to bring her as legal representative of the deceased Latha in the said appeal;



W.P(MD)No.8650 of 2021

that the respondents 3 and 4 by suppressing the decree passed in O.S.No.12 of 2017 created a consent deed and other sale deeds by creating a forged Will, as if the same was executed by the said Latha in favour of her brother's daughter minor Oviya represented by the second respondent as her guardian; that non-disclosure of injunction decree and wrong statement of the respondents 3 and 4 by way of forged Will for presenting the deeds for registration attracts Section 82 of the Registration Act and that therefore, the first respondent has mandatory duty to initiate criminal action against the respondents 3 and 4.

5. It is not in dispute that the petitioner has submitted a representation, dated 21.08.2020 to the first respondent, seeking reliefs to cancel the consent deeds and the sale deeds and to take departmental action against the Sub Registrar, Theni and also to take appropriate action under Sections 82 and 83 of the Registration Act against the respondents 3 and 4.

6. The first respondent has passed the impugned order, dated 10.12.2020 that as per the judgment of the Hon'ble Supreme Court, the registering authorities have no power to cancel the documents and directed the parties to approach the competent civil Court and to get appropriate



W.P(MD)No.8650 of 2021

reliefs. Aggrieved by the impugned order, the present Writ Petition came to be filed.

7. There is absolutely no dispute about the legal position as of now that the registering authorities including the Inspector General of Registration has no power to cancel the registration of any document, which has already been registered.

8. When the matter was taken up for hearing earlier, the learned counsel for the private respondents submitted that even before filing the present writ petition, the plaintiff herein has filed a suit before the District Munsif Court to declare that the Will alleged to have been executed by the deceased Latha on 19.11.2019, is null and void and for permanent injunction restraining the defendants 1 and 2 therein from making any alienations or encumbrances over the suit property in pursuance of the unregistered Will, dated 19.11.2019 and also to declare that the documents registered on 04.06.2020 on the file of the Sub Registrar Office, Theni, are all legally invalid and for permanent injunction restraining the defendants 1 to 3 from making any alienations or encumbrance over the suit property and the same is pending in O.S.No.121 of 2021 on the file of the Principal District Court, Theni.



W.P(MD)No.8650 of 2021

9. The learned counsel for the respondents 3 and 4 would submit that the fourth respondent has filed a revision in C.R.P(MD)No.72 of 2024, seeking early disposal of the suit in O.S.No.121 of 2021 and this Court vide order, dated 12.01.2024, directed the trial Court to comply the Official Memorandum of this Court in R.O.C.No.3793A/2010/B5/Statistics, without fail.

10. The learned counsel for the petitioner would submit that though the first respondent has no power to cancel the documents, he has every power to initiate action under Section 83 of the Registration Act as the respondents 3 and 4 have suppressed the passing of preliminary decree and granting of permanent injunction in O.S.No.121 of 2021 and the pendency of the appeal.

11. The learned counsel for the respondents 3 and 4 would submit that since the matter was settled between the parties, the appeal was dismissed as withdrawn. He would further submit that the permanent injunction was granted against the defendants and the earlier suit restraining the alienation and encumbrance over the property till the plaintiff gets partition relief and that therefore, there was no injunction against the deceased Latha or against Oviya or against the respondents 3 and 4.



W.P(MD)No.8650 of 2021

12. Considering the facts and circumstances of the case, the contention of the writ petitioner that the first respondent ought to have initiated action under Sections 82 and 83 against the respondents 3 and 4 cannot be accepted and the requisition itself is without any basis. As rightly contended by the learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that the first respondent in the impugned order has only directed the parties to approach the Civil Court and that since the civil suit is already pending between the parties, the petitioner can very well work out her remedy in that suit.

13. Considering the above, this Court is not inclined to interfere with the impugned order passed by the first respondent and the petitioner is at liberty to work out her remedy in the suit in O.S.No.121 of 2021 pending on the file of the Principal District Court, Theni.

14. In the result, the Writ Petition is dismissed. No costs.

27.03.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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W.P(MD)No.8650 of 2021

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To

- 1.The District Registrar (Admin),
Registration Department,
Theni District.
- 2.The Sub Registrar,
Theni, Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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W.P(MD)No.8650 of 2021

K.MURALI SHANKAR, J

das

Pre-delivery Order made in
W.P(MD)No.8650 of 2021

Dated : 27.03.2024