



W.P(MD)No.22472 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.03.2024

Delivered on : 28.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.22472 of 2021

Padhuru R.Pandurangan

... Petitioner

Vs.

The Sub Registrar,
Paramakudi Sub Registrar Office,
Paramakudi Taluk,
Ramanathapuram District.

... Respondent

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 of the impugned refusal check slip No.RFL/Paramakudi/12/2021, dated 29.11.2021 on the file of the respondent and quash the same and further directing the respondent to register the settlement deed, dated 18.11.2021 executed by the petitioner to his son and daughters.

For Petitioner : Mr.K.Vinoharan

For Respondent : Mr.S.R.A.Ramachandran,
Additional Government Pleader,



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ORDER

The Writ Petition has been filed seeking orders to quash the impugned refusal of check slip, dated 29.11.2021, which came to be issued by the respondent and consequent direction to the respondent to register the settlement deed, dated 18.11.2021, which came to be executed by the petitioner in favour of his son and daughters.

2. The case of the petitioner is that the property, which is the subject matter, is a residential house property bearing Door No.5/114, Patel Street, Emaneswaram Town, Paramakudi Taluk, Ramanathapuram District; that the petitioner is residing with his family in the said house; that the petitioner has executed a settlement deed in respect of the property subject matter consisting three items of property; that the first item is a land measuring 720.25 sq.ft and the house was constructed on the said two items of land; that the third item is the common pathway; that the first item was belonging to the petitioner and his brother P.R.Ramalingam; that they have partitioned their property vide registered partition deed, dated 15.09.1997, whereunder the second item therein (item 1 of the settlement deed) was allotted to the



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petitioner; that the items 2 and 3 were purchased by the petitioner's mother Pathuru R.Rajammal vide sale deed, dated 24.11.1974; that his mother during her lifetime executed a Will, dated 13.03.2003 bequeathing the said property in favour of the petitioner; that the petitioner's brother P.R.Ramalingam and sisters Saroja and Danalakshmi had signed as witnesses in the said Will; that his mother died on 29.03.2004 and after the demise of this mother, he has become the owner of the items 2 and 3 of the settlement deed; that when the petitioner's mother was alive, the petitioner along with his mother mortgaged the property on 01.03.2000 with Paramakudi Co-operative Society and on availing loan, constructed a new house; that the petitioner, after the death of his mother, repaid the entire loan amount and discharged the mortgage; that the petitioner, who was aged 67 years has decided to settled his property in favour of his son and daughters and on that basis, executed a settlement deed, dated 18.11.2021 and that when the same was presented for registration, the same was returned on 29.11.2021 with a refusal check slip and that since the reasons alleged for refusal is not in accordance with law, he was constrained to file the above writ petition.



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3.The main reasons for refusing the registration as per the check slip is that the Will through which, the petitioner is claiming ownership, was unregistered and that the patta stands in the name of the mother and not in the name of the petitioner.

4. As rightly pointed out by the learned Additional Government Pleader appearing for the respondent that the Sub Registrar has raised a doubt about the thump impression available in the Will and also the genuineness of the Will. It is pertinent to note that the Will is a document, which does not required any registration. Since the Registration Act does not mandate registration for the Will, the reason assigned by the Sub Registrar that the document cannot be registered as the document through which, the executant is claiming right, was an unregistered document, is legally unsustainable.

5. The learned counsel appearing for the writ petitioner has relied on the decision of the Division Bench of this Court in ***W.A.(MD)No.308 of 2023 dated 20.03.2023***, wherein the check slip issued by the registering authority for returning a partition deed on the grounds that the partition document was based on an unregistered Will and that encumbrance



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certificate was not produced, learned Single Judge has directed the registering authority to decide whether the Will alleged was true or not and further directed the registering authority to issue notice to the siblings after getting address details from the appellant therein and if no objection is received to proceed with the registration of the document. When the said order was challenged, the Division Bench, while allowing the writ appeal, has observed as follows:

“4. There will be a direction to the Registering Authority to register the document on production of encumbrance certificate alone. The Registering Authority shall not insist upon registration of the Will or shall not embark upon any other enquiry. We are emboldened to hold so, because there are enough and more provisions in the Transfer of Property Act, 1882 and the General Laws, which protect the interest of the persons, who are not parties to the document. Admittedly, the siblings of the appellant are not parties to the partition deed and the same is not binding to them, if they choose to challenge it in the manner known to law. We, therefore, will not allow the Sub-Registrar to embark upon the exercise of enquiry and allow the Sub Registrar to decide the genuineness of the Will, which would be against the very provisions of the Transfer of Property Act, 1882. The appellant shall re-present the document along with encumbrance certificate and the Joint Sub Registrar No.II, Thirunagar, Tirunelveli Town, shall register the document



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without insisting on proof of the Will or registration of the Will or no objection from the siblings, within a period of fifteen days from the date of presentation of the document.”

6. Now turning to the second objection that patta does not stand in the name of the petitioner, it is the admitted case of the petitioner that the patta still stands in the name of his mother.

7. When the matter was taken up for admission, a learned Judge of this Court directed the petitioner to present the document along with property tax assessment, which would signify that the authorities are collecting taxes in which, the petitioner is residing and thereafter, the respondent has to take a decision with respect to that particular document. As already pointed out, the patta does not stand in the name of the third party and is only in the name of the petitioner's mother. Moreover, the petitioner's siblings have attested the unregistered Will.

8. As already pointed out, the learned Judge of this Court directed the petitioner to produce the records relating to property tax assessment which would show that the authorities are collecting taxes for the house, in which



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the petitioner is residing. Considering the above, this Court decides that the impugned order is liable to be interfered with.

9. In the result, the Writ Petition is allowed and the petitioner is directed to present the document along with records relating to property tax assessment and on production of the same, the respondent is directed to register the document within a period of 15 days from the date of presentation of the said document. No costs.

28.03.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To

The Sub Registrar,
Paramakudi Sub Registrar Office,
Paramakudi Taluk,
Ramanathapuram District.



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K.MURALI SHANKAR, J

DAS

Pre-delivery Order made in
W.P(MD)No.22472 of 2021

Dated : 28.03.2024