



W.P(MD)No.31328 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.31328 of 2023

and

W.M.P.(MD)Nos.26878 & 26881 of 2023

S.M.Sivasamy

... Petitioner

Vs.

1.The Inspector General of Registration,
No.100, Santhome High Road,
Raja Annamalaipuram,
Chennai-600 028.

2.The Deputy Inspector General of Registration,
Madurai Region,
TNAU Nagar, Rajakambeeram,
Y.Othakadai,
Madurai-625 107.

3.The District Registrar (Administration)
(In the cadre of Assistant Inspector
General of Registration)
Dindigul.

4.The Sub Registrar,
Nilakkottai,
Dindigul District.

5.S.M.Sivakumar

... Respondents



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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 pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No.8693/Aa4/2023, dated 17.10.2023 impugned order passed by the 3rd respondent in Appeal No. 04/2022, File No. 5426/Aa1/2022, dated 26.07.2023 and the impugned order passed by the 4th respondent in Na.Ka.No.154/2022, dated 10.08.2022, quash the same and direct the 4th respondent to register the pending Document No.P.89/2020, dated 05.09.2020.

For Petitioner : Mr.M.Saravanan

For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader for R1 to R4
: Mr.G.Prabhu Rajadurai
for Mr.S.Vellaichamy for R5

ORDER

Heard the learned counsel on both sides.

2. The petitioner and the 5th respondent are siblings. Their father S.Mani Thevar executed the settlement deed dated 05.09.2020 in favour of the petitioner herein and presented the same for registration before the fourth respondent. The 5th respondent lodged objections. Sustaining the stand of the fifth respondent, registration was refused. Questioning the refusal check slip issued by the fourth respondent on 10.08.2022, the petitioner filed an appeal



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before the third respondent under Section 72(1) of the Registration Act, 1908.

The appellate authority confirmed the order passed by the registering authority.

Even though the statutory revision will not lie, still the petitioner moved the second respondent. The second respondent called upon the petitioner to move the jurisdictional civil Court. Challenging these orders, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The learned Special Government Pleader appearing for the official respondents submitted that the impugned orders are well reasoned and that they do not deserve to be set aside.

5. The fifth respondent has filed counter affidavit and the learned counsel for the fifth respondent reiterated all the contentions set out therein. One of the main contentions of the fifth respondent is that he has put up a full-fledged construction in Item No.3 and that their father Mani Thevar was not competent



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to include the said item in the settlement deed. It is also argued that Item Nos.1 to 4 are the ancestral properties and that they could not have been the subject matter of the settlement. It is further pointed out that Item Nos.5 to 7 were purchased out of the earning derived from Item Nos.1 to 4. He called upon this Court to dismiss the writ petition.

6. I carefully considered the rival contentions and went through the materials on record. There are totally 28 items. Admittedly, Items 8 to 20 are the mother's properties (Packiammal). The mother pre-deceased the father. The said items devolved on her husband, two sons (petitioner & 5th respondent) and daughter. In the subject settlement deed, the father had only settled his undivided 1/4th share in favour of the petitioner. I am clearly of the view that no exception can be taken to it. In fact, the fifth respondent does not appear to have made any serious objection. The objection of the fifth respondent is more in respect of items 1 to 7. I wanted to know if patta in respect of items 1 to 7 is in the name of Mani Thevar. Answer is in the affirmative. Therefore, it may not be open to the registering authority to undertake an investigation as to the real character of the items 1 to 7. It is quite possible that items 1 to 4 may be ancestral properties and items 5 to 7 were purchased out of the earnings from the ancestral properties. But then, the burden to prove the same will be on the



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fifth respondent and the civil Court alone can render a finding thereon. Enquiry before the registering authority is rather summary in nature. The registering authority is utterly incompetent to render any finding in this regard.

7. In this view of the matter, the impugned order is set aside. It is stated that Mani Thevar passed away after the execution of the document deed and the document deed is still with the fourth respondent. The fourth respondent is directed to register the same and release it to the petitioner subject to fulfilment of other usual formalities.

8. The issue cannot be left at that. I am more than satisfied that the fifth respondent has put up a pucca construction in item No.3. The photograph clearly bears this out. The 5th respondent would state that after getting permission from the father, construction was put up. The father is not here to controvert the said assertion. When the physical possession of item No.3 is with the fifth respondent, the petitioner can enforce his rights if at all only by taking recourse to due process of law. In other words, the petitioner has to file a suit for recovery of possession as regards item No.3 against the fifth respondent. In a case recently decided by me, I had followed the Hon'ble Supreme Court decision reported *in AIR 2004 SC 4609 (Rame Gowda Vs.*



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M.Varadappa Naidu). Law has to necessarily protect the person in physical possession of the property. Though technically this issue lies outside the scope of this writ petition, I am inclined to grant relief in favour of the fifth respondent.

9. The Writ Petition is allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

27.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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NOTE:Issue Order Copy on 07.08.2024
To

- 1.The Inspector General of Registration,
No.100, Santhome High Road,
Raja Annamalaipuram,
Chennai-600 028.
- 2.The Deputy Inspector General of Registration,
Madurai Region,
TNAU Nagar, Rajakambeeram,
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G.R.SWAMINATHAN, J.

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