
(2011) 12 MAD CK 0048
In the Madras High Court
Case No : Writ Petition (MD) No. 8199 of 2009

T. Parasakthi

APPELLANT

Vs

The District Registrar, Palani, Dindigul District, The Sub Registrar, Ottanchattram, Dindigul District and Malathi

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Citation : (2011) 12 MAD CK 0048

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Louis For Mr. T. Lajapathi Roy, for the Appellant; M. Govindan, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner has filed the present writ petition seeking to set aside the communication sent by the Sub Registrar, dated 03.08.2009. By the impugned communication, the petitioner was informed that the document which was presented to the Sub Registrar for registration carrying a Number P.27/2009, was returned on the basis of the request made by the executant of the document on 25.05.2009 without registering. Challenging the said communication, the petitioner has filed the present writ petition and after setting aside the same, seeks for restoration of the settlement deed, dated 20.03.2009 on the file of the Sub Registrar. The petitioner has also impleaded the third respondent who is none other than his sister in law and wife of late Sakthivel. The settlement deed which is referred by the petitioner and a copy has also furnished in the typed set at page Nos. 1 to 32 shows that it was written by the third respondent in favour of the her two minor children and the petitioner was made in charge of the taking over of the property allotted in favour of the two minor children of the third respondent.

2. The contention of the petitioner was that after the death of his father who was a forest contractor and a timber merchant died on 05.04.1999. The family

property was kept as joint family property and on family partition, the husband of the third respondent was allotted properties under A schedule properties and B schedule properties was allotted to the petitioner.

3. The mother of the petitioner executed a registered settlement deed in favour of the third respondent husband on 20.03.2006. After the death of his brother sakthivel, the husband of the third respondent at the age of 44 years due to kidney failure and liver, leaving behind the third respondent and two minor children as legal heirs to succeed his estate. The petitioner's mother persuaded the petitioner to maintain the properties till the minor children attain majority. Therefore, he is maintaining the properties of late Sakthivel for the last one year. The land allotted to his brother are fertile lands in which cash crops are also grown and the yield will be not less than 20 lakhs per annum after defraying expenses.

4. The third respondent, according to the petitioner was not leading a proper life with his mother. The sister of the third respondent eye over the management of the property and therefore, she poisoned the mind of the third respondent and made inimical towards the family members.

5. Under such circumstances, the family members demanded to give her husband's sharer in the form of money and quarreled and left the joint family along with the two minor children. After finding the evil designs of her sister, the third respondent executed a settlement deed in favour of the minors executed a settlement deed in favour of the minors appointing the petitioner as guardian of the property. The first child S. Priyanka, is aged only 12 years studying 6th standard and the second minor daughter namely, Harshini @ Karishma was studying LKG. The third respondent who is the mother and natural guardian instead of taking care and welfare of the children miserably failed to do so, she is interested in getting remarriage and totally neglected the family and the minors and converted as Muslim and started calling her name as Sumaya with a view to have another marriage with one Mohamed Ismail, at Palani at the instance of her sister. He is only an auto driver has no property of his own.

6. All these allegations are unnecessary for deciding the lis between the parties. It is suffice to state that the petitioner being described as guardian of the property and unregistered documents presented a settlement deed in favour of the third respondent daughters and was not registered and the document has been taken returned by her. It is at this juncture the petitioner has filed the present writ petition seeking for the return of the document and also for registering the document

7. When the matter came up on 20.08.2009, notice of motion was ordered. On notice from this Court, the second respondent Sub Registrar has filed a counter affidavit dated "nil" September 2009. In paragraphs 4 and 5, the second respondent has set out the circumstances under which the impugned communication came to be sent to the petitioner are as follows:

4. It is respectfully submit that the unregistered document presented for registration was kept pending in our office for want of no objection certificate as it contained properties lying in the Sub Registration District of Joint Sub Registrar Office I, Palani. The document was presented by the executant i.e., 3rd respondent in this case. Hence, the question of any reference to the petitioner does not arise.

5. It is respectfully submit that the document was not allowed by the 2nd respondent to be unilaterally cancelled or changed by the executant. As per the standing order 244 of this department, "A document kept pending admission of execution by some or all of the executant or for any other reason may be returned at the request of the presentant at any stage, provided it is not insufficiently stamped or alleged to have been forged...". In the standing order no time limit has been stipulated in the standing order. As per the receipt number 20091157 of the pending document, registration fee has been paid by the executant, the petitioner has not made any request to us protesting the return of the pending document. We have acted as per the rules and regulations of our departmental rules. Hence our act of allowing the executant to withdraw the document is not illegal. Hence we may be exonerated from the case.

8. It is not clear as to how the petitioner has any locus standi to make the prayer as made in the writ petition. Except that his name find place in the settlement deed which is yet to be registered, he has not produced any document to show that he has been appointed by any competent court as a guardian of the two minor children. In which event, his remedy is elsewhere and not before this Court attacking the communication sent by the Sub Registrar which is in consonance with the Registration Manual maintained by the Department more particularly Standing Order 244 referred to therein.

9. Mr. S. Louis, learned counsel for the petitioner though placed reliance upon a judgment of this Court in G.D. Subramaniam v. The Sub Registrar, Office of Konur Sub Registrar and another reported in 2009 (2) CCC 252 (Mad.) that judgment has no relevant because that deal with the registration of cancellation of sale deed unilaterally by an executant without notice to the beneficiary of the property.

10. In any event, inasmuch as the respondents have satisfied that there was no attempt to smuggle in a document which is under stamp authorities role comes to an end whether the original executant takes back the document without registering for reason best known is not a concerned of the Registering Authorities. As noted already the role of the Registering Authority in case of any under value document is only impound the document and claim the differential stamp duty and the piece of legislation is only concerned about the collection of dues to the said document. It does not create any rights of the parties and therefore, the third respondent being a mother and natural guardian of the two minor children and also inherited property due to the death of her husband is entitled to either to make a settlement or on after second thoughts make any

other arrangement for her minor children. It is not open to the petitioner who is only paternal uncle of the minor children to make a prayer as made in the writ petition. Therefore, the relief claimed by the petitioner cannot be countenanced by this Court. Hence, the writ petition stands dismissed. No costs.