

K. Sunil Kumar Vs. the Sub-registrar, Office Kollamcode Sub-registrar, Kollamcode and Another

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Court : Chennai Madurai

Decided On : Sep-04-2012

Judge : K. Chandru

Appeal No. : W.P.(MD)No.6195 of 2012

Appellant : K. Sunil Kumar

Respondent : The Sub-registrar, Office Kollamcode Sub-registrar, Kollamcode and Another

Advocate for Pet/Ap. : For the Petitioner: J. Anandhavalli, Advocate. For the Respondents: K. Mahendran, Spl GP.

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the respondent to register the document presented for registration in September 2011 pending in Serial No.P56/2011 within a time fixed by this Court.)

1. This writ petition is filed by the petitioner seeking for a direction to the 1st respondent / Sub-Registrar, Kollamcode, to register the document presented for registration in September-2011 pending in Serial No.P56/2011 within a time frame fixed by this Court.

2. When the writ petition came up on 27.04.2012, this Court directed the learned Special Government Pleader to get instructions as to why the document presented by the petitioner has not been registered.

3. On notice from this Court, a counter affidavit has been filed by the 1st respondent, dated (Nil) June, 2012.

4. Subsequently, an impleading petition in M.P.(MD).No.1 of 2012 has been filed by one Jothi Santhosh Kumar, W/o.Santhosh Kumar, seeking to implead of her as 2nd respondent. The said impleading petition was ordered on 26.06.2012. On such impleadment, the 2nd respondent has also filed a counter affidavit, dated 16.07.2012.

5. Heard both sides.

6. The case of the petitioner was that a suit in O.S.No.649 of 1968 was filed originally by Govinda Pillai, S/o.Madahavan Pillai for redemption and pending the said suit, he died and the legal representatives namely, Jyothismatha Devi, Radhakrishnan Nair and Sasi Kumaran Nair were impleaded. Thereafter, the legal heirs of Radhakrishnan Nair, Jyothismatha Devi were also impleaded and a preliminary decree for redemption was passed on 27.02.1973 and the final decree was passed on 30.03.1985. In the execution petition, the redemption decree was executed and they were put in possession of the mortgaged property. On 22.03.2011, the legal heirs of Jyothismatha Devi namely Ajaynath, Raghunath, Padmakumari and Jayashree sold the property in favour of the second respondent herein Jyothi Santhosh kumar. By virtue of the decree in O.S.No.649 of 1968, Radhakrishnan Nair, Sasikumar Nair and Jothimatha Devi were allotted an extent of 30 cents in R.S.no.43/1, 20 cents in R.S.No.43/3 and 20 cents in Re.Sy.No.41/12 in Methukummal Village, Kanyakumari District. The petitioner herein purchased total extent of 70 cents of land in R.S.No.43/1, 43/3 and 41/2 in Methukummal Village, from the three owners namely Radhakrishnan Nair, Sasikumaran Nair and Ajayanath. That document was presented before the Sub-Registrar on 30.09.2011. Even though it was lawfully presented, it was kept pending without registration and no reason was given by the Sub-Registrar (1st respondent herein). Hence, the present writ petition came to be filed.

7. In the counter affidavit filed by the 1st respondent / Sub-Registrar, it was stated that initially one Balakrishnan, S/o.Raman Nadar of KannanKaravilai Veedu, Chathancode Post, claiming right over the property covered under the above said document, filed a suit in O.S.No.425 of 2011 before the District Munsif Court, Kuzhithurai, for declaration that the above said sale deed created by them is to be declared as null and void and for junction restraining the defendants from disturbing the possession of the said property. Subsequently, the petitioner herein, who is the 2nd defendant in the said suit, the executant of the document viz., 1st defendant and the plaintiff therein entered into a compromise and the above said Document No.P56/2011 was declared null and void and the said suit was disposed of on 27.01.2012 in accordance with the compromise. Again another suit in O.S.No.14 of 2012 was filed by the 2nd respondent herein. In that suit, the vendor R.J.Ajayanath was shown as 1st defendant and the petitioner herein was shown as 2nd defendant and the Sub-Registrar, Kollemcode was shown as 3rd defendant. The said suit was filed for declaration that the sale deed created by the said R.J.Ajayanath and the petitioner herein is null and void. The said sale deed was executed in respect of R.S.No.43/3 and the same was registered as Document No.P56/2011 and the matter is covered by the said suit. The said suit is still pending. Hence, the question of registering the said document does not arise.

8. In the counter affidavit filed by the 2nd respondent it was stated that the said R.J.Ajaynath for himself and on behalf of other legal heirs of late Jothismathi had executed a sale deed in favour of the 2nd respondent on 22.03.2011 and it was registered as Document No.944/2011. Based upon the said sale deed, the 2nd respondent took possession of the property and the revenue records have also been mooted in her favour. The entire 50 cents of land in New Survey No.43/3 of Methukummal Village is in her possession and enjoyment. The said R.J.Ajaynath had indulged in criminal activities by executing several sale deeds in favour of different person for the same property. Knowing the fraudulent activities of the said R.J.Ajaynath, the 2nd respondent herein has filed O.S.No.14 of 2012 on the file of the District Munsif Court, Kuzhithurai, against the said R.J.Ajaynath and the said suit is still pending. A criminal case has also been filed against the said R.J.Ajaynath and his associates including the writ petitioner herein, which is pending investigation. Suppressing these facts, the present writ petition came to

be filed.

9. In view of the stand taken by the respondents and in the light of the matter being pending before the Civil Court, the claim of the petitioner cannot be countenanced. Hence, this writ petition will stand dismissed. No costs.

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