

(2009) 10 MAD CK 0207

Madras High Court

Case No: Writ Petition (MD) No. 3509 of 2009

S. Subramanian

APPELLANT

Vs

The Joint Sub-Registrar-III

RESPONDENT

Date of Decision: Oct. 30, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Stamp Act, 1899 - Section 47A

Hon'ble Judges: M. Jaichandren, J

Bench: Single Bench

Advocate: M. Ajmal Khan, for the Appellant; Pala Ramasamy, Special Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Jaichandren, J.

This writ petition has been filed praying for a writ of Mandamus to direct the Respondent to release the document of the Petitioner, registered as Document No. 62/2008, within a stipulated period.

2. It has been stated that the Petitioner's elder brother, S. Thiagarajan, had executed a release deed in favour of the Petitioner and his younger brother, S. Swaminathan, in respect of the properties shown in the schedule of the said deed. The properties had been acquired by the Petitioner's father and they were in his continuous possession during his life time. Thereafter, he had bequeathed all the properties in favour of the Petitioner and his younger brother, S. Swaminathan, by way of a Will. Thereafter, the Petitioner and his younger brother had been enjoying the properties, continuously, without any intervention from others. While so, the Petitioner's mother namely, Rajamani ammal, had claimed right and title, in respect of the said properties. In such circumstances, the Petitioner had filed a suit, in O.S.

No. 213 of 2006, on the file of the Sub Court II, Trichy, and had also obtained an order of interim injunction restraining the Petitioner's mother from alienating the scheduled mentioned properties, during the pendency of the said suit.

3. The elder brother of the Petitioner had also executed a release deed in favour of the Petitioner and his younger brother. When the said release deed was presented for registration before the Respondent, it had been registered as document No. 62/2008, on 21.8.2008, on payment of the registration fee of Rs. 2,120/-, along with the other prescribed charges. However, after registering the release deed, the Respondent chose to withhold the same on the ground that a civil dispute was pending. Even though the Petitioner had submitted a representation to the Respondent requesting him to release the document, registered as document No. 62/2008, there was no response from the Respondent. Thereafter, the Petitioner had sent a legal notice, on 26.12.2008, for the release of the document. Since there was no response for the representation, the Petitioner had presented the present writ petition before this Court, under Article 226 of the Constitution of India.

4. The Learned Counsel appearing for the Petitioner had submitted that the second Respondent had no power to retain the release deed on the ground that a civil dispute is pending. The Respondent having registered a release deed, as document No. 62/2008, on 21.8.2008, is not competent to withhold the same. Further, the Respondent has no power to retain the document, in view of the decision of this Court reported in State of Rajasthan and Others Vs. Basant Nahata, and in R. Sreedher v. Registering Officer (district Registrar) 2008 (1) MLJ 342 : 2008 4 L.W. 603). The action of the Respondent in retaining the document, registered as document No. 62/2008, is arbitrary and illegal.

5. In the counter affidavit filed on behalf of the first Respondent, it has been stated that a document termed as a release deed had been presented for registration, on 21.8.2008. On the presentation of the said document, the usual procedures and guidelines prescribed for the registration of the properties, situated in different registration sub-districts, had been followed and the document had been kept pending for obtaining the details or objections from other Sub-Registrar Offices. The matter was referred to the Sub Registrar, Manapparai, and the joint Registrar, Worai-yur. The Sub Registrar, Woraiyur, vide his communication, dated 25.9.2008, had informed that a civil suit, in O.S. No. 213 of 2006, was pending and an order of interim injunction had been obtained, in I.A. Nos. 453 and 468 of 2006. By the said injunction orders, the Petitioner's mother Rajammal had been restrained from alienating or encumbering the suit schedule properties in question. Since the release deed had referred to the pendency of the civil suit and as it is said that there is a Will executed, on 17.4.2006, and as there are contradictions, with regard to the release of the properties, the Respondent had chosen to withhold the document.

6. At this stage of the hearing of the writ petition, the learned Special Government Pleader appearing on behalf of the Respondent had submitted that the document

No. 62/2008, on the file of the Respondent would be returned to the Petitioner, with the necessary endorsements and the matter would be referred to the Deputy Collector (Stamps), Trichy, u/s 47-A of the Stamps Act.

7. In view of the submissions made by the Learned Counsels appearing for the parties concerned, the Respondent is directed to return the document to the Petitioner after making the necessary endorsements on it, as per law, within a period of two weeks from the date of receipt of a copy of this order. The Petitioner is to cooperate in the Section 47-A proceedings before the Deputy Special Collector (Stamps) Trichy, to enable him to conduct and complete the proceedings, expeditiously. Accordingly, the writ petition is disposed of with the above directions. No costs. Consequently, connected M.P.(MD) No. I of 2009 is closed.