



Order dated 10.10.2023 in
W.P.No.29224 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.29224 of 2023

Easwari

... Petitioner

versus

The Sub Registrar,
Office of Sub Registrar,
Mulanoor,
Tiruppur District.

.....Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of order of refusal check slip in Refusal Number RFL/Mulanoor/8/2021 dated 19.04.2023 passed by the respondent herein and quash the same and consequently direct the respondent to register the Sale Deed dated 17.04.2023 presented by the petitioner herein.

For Petitioner : Mr.N.Ponraj

For Respondent : Mr.R.Ramanlal
Additional Advocate General
Assisted by Mr.Yogesh Kannadasan
Special Government Pleader



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ORDER

The petitioner has filed the present Writ Petition praying to quash the refusal check slip in Refusal Number RFL/Mulanoor/8/2021, dated 19.04.2023 passed by the respondent and consequently to direct the respondent to register the Sale Deed, dated 17.04.2023 presented by the petitioner.

2. Learned counsel for the petitioner submitted that the petitioner is the absolute owner of the land, measuring an extent of 2.84 acres in S.F.No.152/2 in Kalipalayam Village in Mulanoor Union of Dharapuram Taluk in Tiruppur District, vide settlement deed dated 17.08.2011, registered as Doc.No.2085 of 2011 on the file of the respondent. Due to her financial crisis, she intended to sell the above said property to one Shivashanmugam and accordingly, she executed a sale deed, dated 17.04.2023 in favour of Shivashanmugam and the same was presented for registration before the respondent. However, the respondent refused to register the sale deed stating that attachment orders of Civil Court are pending and also no prior documents were filed. He further submitted that, pending attachments, will not be a bar to register the present document as per the judgment of the Division Bench of this Court in W.P.No.674 of 2020, dated 05.11.2020 [*Ramayee.N., Vs. The Sub Registrar, Registration Department,*



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Valapady, Salem District] and another], reported in 2020 (6) CTC 697. Further, the first proviso to Rule 55-A(i) of Registration Rules empowers the Sub Registrar to refuse registration citing attachments, which had been declared as null and void by this Court in W.P.No.2758 of 2023 dated 08.02.2023 [*Federal Bank Ltd., Vs. Sub Registrar, Office of the Sub Registrar, Pollachi and others*] reported in 2023 (2) CTC 289. Hence, the respondent/Sub Registrar has no power to insist the parties to clear the attachment orders.

3. Mr.R.Ramanlal, learned Additional Advocate General assisted by Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the respondent submitted that as per Rule 55-A(i) of the Registration Rules, if any property is attached or mortgaged or Lease Agreement is entered into, the Sale Deed cannot be registered. Thus, as per Rule 55-A(i) of the Registration Rules, a document cannot be presented for registration, unless the attachment is raised. In the present case, three attachment orders are pending on the subject property. Therefore, the Sub Registrar is not in a position to register the document, when the attachment orders are in force.

4. On a perusal of the impugned refusal check slip passed by the respondent, it is seen that three attachment orders are pending on the subject



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property and therefore, they advised the parties to present the document, after raising the attachments. Further, the impugned refusal check slip clearly shows that there are three attachments in the subject property.

5. In the facts and circumstances, it is useful to extract Rule 55-A(i) of the Registration Rules, which reads as follows:

"Rule 55-A(i):

The registering officer before whom a document relating to immovable property is presented for registration, shall not register the same, unless the presentant produces the previous original deed by which the executant acquired right over the subject property and an Encumbrance Certificate pertaining to the property obtained within ten days from the date of presentation:

Provided that in case an encumbrance as to mortgage, orders on Attachment of property, sale agreement or lease agreement exists over the property, the registering officer shall not register such document if the time limit for filing of suit is not lapsed, or No Objection Certificate is not granted by the appropriate authority or raising of the attachment is not done, as the case may be:

Provided further that in case the previous original deed is not available as the property being an ancestral one, the registering officer shall not register such document, unless the presentant produce any revenue record evidencing the executant's right over the subject property such as patta copy issued by Revenue Department or tax receipt:

Provided also that if the previous original deed is lost, the registering officer shall register such document only on production of non-traceable Certificate-issued by the Police department alongwith



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the advertisement published in the local Newspaper as to the notice of loss of the previous original deed:

Provided also that production of the previous original Deed shall not be necessary where the Government or a Statutory body is the executant of the document or for such class of documents as may be notified by the Inspector General of Registration, from time to time."

6. Learned counsel for the petitioner contended that the attachments in this case are only for lesser amount, and in support of the same, the learned counsel for the petitioner relied on a decision of this Court reported in 2023 (2) CTC 289 (Federal Bank Limited Vs. Sub-Registrar), wherein, this Court observed as follows:

"19. The effect of the First Proviso, is to virtually nullify the aforesaid statement of law by the Supreme Court which is binding law under Article 141. That apart, even if an Order of Attachment is made, any Sale Deed registered thereafter would be automatically void only against all claims enforceable under the Attachment under the provisions of Section 64 of the Code of Civil Procedure. For example, if the Attachment is made for recovery of sum of Rupees One lakh and the property value is more than One Crore, it cannot be said that entire property cannot be dealt. Such case sale is void only against claim of Rupees One Lakh and its interest and not in entirety."

7. In the case on hand, the impugned refusal check slip pertains to three



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attachments of the properties and it is not stated as to what is the amount involved in the said attachments. Since no value has been mentioned in respect of these attachments, the Registrar has returned the documents with a direction to present them after raising the attachments.

8. Under the above circumstances, this Court does not find any perversity in the impugned refusal check slip dated 19.04.2023 passed by the respondent and it is for the petitioner to present the document, which is free from encumbrance.

9. Accordingly, this writ petition is dismissed. There shall be no order as to costs.

10.10.2023

Speaking Order: Yes/ no
Index : Yes/No
Neutral Citation: Yes/No
ms/cs

To
The Sub Registrar,
Office of Sub Registrar,
Mulanoor,
Tiruppur District

Pg.Nos.6/7



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P.VELMURUGAN, J.

CS

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