

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.29130 of 2018  
and  
W.M.P.No.34064 of 2018

1. Varadharajapillai Arumugam  
2. Poonkodi ... Petitioners

Versus

The Sub Registrar,  
Sub Registrar Office,  
Rishivandiyam,  
Sankarapuram Taluk,  
Villupuram District. ... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified mandamus calling for the records of the respondent dated 23.10.2018 in Registration Refusal Serial No.RFL/Rishivindhiam/2/2018 and to quash the same and consequently direct the respondent to register the Memorandum of Agreement Evidencing Deposit of Title Deeds in favour of Axis Bank, dated 25.09.2018 in TP/42112202/2018.

For Petitioners: Mr.J.Srinivasa Mohan

For Respondent : Mr.T.M.Pappiah  
Special Government Pleader (Registration)

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O R D E R

This Writ Petition has been filed challenging the order of the respondent dated 23.10.2018 in Registration Refusal Serial No.RFL/Rishivindhiam/2/2018 and to quash the same and consequently direct the respondent to register the Memorandum of Agreement Evidencing Deposit of Title Deeds in favour of Axis Bank, dated 25.09.2018 in TP/42112202/2018.

2. The case of the petitioners is that the petitioners claim to be the owners of the lands situated at Rishivandiam Village and the father of the first petitioner executed a settlement deed, dated 04.10.1991, in favour of the first petitioner, in respect of some lands. The petitioners being agriculturists had approached Axis Bank to avail cash credit facility for agricultural purpose. Accordingly, Axis Bank sanctioned a loan of Rs.17,30,000/- (Rupees Seventeen Lakhs Thirty Thousand only). The Bank had stipulated a creation of Equitable Mortgage of the agricultural lands. Accordingly, a Memorandum Of Agreement evidencing deposit of Title Deeds was executed on 25.09.2018 in favour of the Axis Bank, Kallakurichi and the mortgage deed was also presented for registration. After verification of the title deed by the bank, when the petitioners approached the respondent for registration of the Memorandum, the respondent had refused to register the same vide order dated 23.10.2018, stating that two survey numbers in 219/6 and 238/4 must be deleted from the Memorandum, as there are subsequent transactions in those survey numbers. Hence, the petitioners have come forward with this Writ Petition seeking for the aforesaid relief.

3. It is submitted by the learned counsel for the petitioners that the Bank only after scrutinizing all the documents and considering the legal position, had sanctioned the loan and directed the Registration of the Memorandum of Agreement. But, the respondent/Sub-Registrar has refused to register the same and therefore prays to allow this Writ Petition.

4. Heard the learned counsel for the petitioners as well as learned Special Government Pleader appearing for the respondents.

5. In similar circumstances, this Court has passed an order in W.P(MD) No.14388 of 2014 dated 01.09.2014. The relevant portion of the same is extracted hereunder:

"4. Section 71 of the Registration Act, 1908 deals with reasons for refusal to register which has to be recorded. In terms of Sub-Section (1) of Section 71, every Sub Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his Sub District, shall make an order of refusal and record his reasons for such order in his book No.2, and endorse the words 'registration refused' on the document, and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded. In terms of Sub-Section (2), no registering officer shall

accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

5. In such circumstances, merely because there is an order of attachment passed by a Civil Court, the same cannot be a ground to refuse to register the Memorandum of Deposit of Title Deeds. If any deposit of title deeds is created in respect of the said property pursuant to the right acquired by the petitioner, vide settlement deed, dated 04.07.2011, it is always subject to further orders to be passed by the Civil Court. The petitioner's case is that she acquired title by way of settlement deed dated 04.07.2011, much prior to the order of attachment. Further, the learned counsel appearing for the petitioner placed reliance on Order 38, Rule 10 C.P.C. stating that attachment before Judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree. The lending bank namely, Canara Bank, Vadamadurai if satisfies with the title of the petitioner over the property, can request the Registrar to register the document. In such circumstances, merely because an order has been passed by the Civil Court effecting attachment, cannot be a bar for entertaining a document for registration. Hence, the reasons assigned by the respondent refusing to register, vide his memo, dated 25.07.2014, is not in accordance with law beyond the scope of Section 71 of the Act."

6. In the instant case the refusal is based on the transactions in S.Nos.219/6 and 238/4. It is already explained before the respondent about the said transactions, as the petitioners had specifically pointed out that S.No.219/6 was a self-acquired property by the father of the first petitioner and it was settled in his favour on 04.10.1991. The first petitioner also filed the said document as Annexure No.1. Subsequently, the first petitioner's mother executed another settlement deed dated 09.04.2001 in favour of his brother, which was also filed as Annexure No.3. As far as S.No.238/4 was concerned also, the first petitioner explained that the same was purchased by the second petitioner/his wife vide sale deed dated 21.06.1996 from Kesavammal and two others. He also filed the sale deed as Annexure 2. He learnt that the said

Kesavammal had purchased 8 cents in the same survey number from one Palaniammal on 02.07.1996 and according to him, the said transaction has nothing to do with the sale deed pertaining to the second petitioner. The encumbrance certificates relating to the subsequent transactions were also filed as Annexure 9 and the pattas issued in favour of the petitioners for all the lands were filed as Annexures 4 and 5 before the respondent. However, it is claimed by the petitioners that the respondent did not take into account all these aspects. The Bank, who is the lender of money has already satisfied itself about the above transactions.

7. Registration is an administrative act to legally record the existence of a contract between parties. When both the parties to the document admit the execution, the respondent ought not to have refused registration in this case.

8. In the light of the aforesaid decision, the writ petition is allowed and the respondent is directed to accept the Memorandum of Agreement Evidencing Deposit of Title Deeds, dated 25.09.2018 and register the same within a period of four weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS ix)  
//True Copy//  
Sub Assistant Registrar

rsi/arr

To

The Sub Registrar,  
Sub Registrar Office,  
Rishivandiyam,  
Sankarapuram Taluk,  
Villupuram District.

+1cc to Mr.J.Srinivasa Mohan , Advocate SR.No. 77478  
+1 CC TO GOVERNMENT PLEADER SR.NO. 77692  
+1cc to Mr.J.Srinivasa Mohan , Advocate SR.No. 77478  
(19/11/2018)

W.P.No.29130 of 2018

ASK(16/11/2018)