



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.09.2019**

CORAM:

THE HONOURABLE **MR. JUSTICE M. SUNDAR**

W.P(MD)No.20882 of 2019

and

W.M.P(MD)No.17466 of 2019

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G.Soundarapandian

... Petitioner

/Vs./

1.The District Registrar,
Palayamkottai, Tirunelveli District.

2.The Sub Registrar,
Sathankulam,
Tuticorin District.

... Respondents

PRAYER: Writ Petition - filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to proceedings in O.M.No.4837/Aa1/2019 dated 09.09.2019, on the file of the first respondent herein and to quash the same and consequently, directing the first respondent to pass appropriate orders, by treating the Memorandum of Appeal dated 09.09.2019 as a statutory appeal under Section 72 of the Registration Act, preferred by the petitioner to the first respondent against the order dated 27.08.2019, passed in Refusal No.RFL/Sathankulam/27/2019 on the file of the second respondent herein, and decide the same in accordance with the law and the procedure within a time frame as may be fixed by this Court.

For Petitioner : Ms.P.Jessi Jeeva Priya

For Respondents : Mr.V.Anand
Government Advocate

ORDER

Ms.P.Jessi Jeeva Priya, learned counsel on behalf of writ petitioner and Mr.V.Anand, learned Government Advocate who accepts notice on behalf of both respondents are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. Undisputed facts are that writ petitioner as vendee and one I.Rajarithnam as vendor presented a sale deed dated 20.08.2019 for registration in the office of the second respondent (jurisdictional Sub-Registrar); that 20.08.2019 sale deed was presented on 27.08.2019; that second respondent jurisdictional Sub-Registrar after examination of the document issued a 'Refusal



Check Slip' making an order refusing registration of sale deed; that reason for refusal has also been given in the refusal check slip and the reason touched upon execution of some earlier document and natham patta; that assailing said order of second respondent refusing registration of said sale deed made on 27.08.2019, writ petitioner preferred an appeal to the first respondent *inter alia* under Section 72 of the Registration Act, 1908 (hereinafter referred to as 'said Act' for the sake of brevity) and under Rule 166 of the 'Registration Rules' (hereinafter referred to as 'said Rules') thereunder; that first respondent passed an order dated 09.09.2019 bearing reference No.O.Mu.No.4837/Aa1/2019 (hereinafter referred to as 'impugned order' for the sake of brevity) holding that there is no provision for an appeal against check slip.

4. In the light of the aforesaid factual backdrop, instant writ petition has been filed by writ petitioner (vendee in said sale deed registration of which has been refused by second respondent) assailing the impugned order.

5. Notwithstanding very many averments made in the affidavit filed in support of instant writ petition, notwithstanding several grounds urged /contentions canvassed in the affidavit filed in support of instant writ petition, at the hearing, learned counsel for writ petitioner focused her submissions on one aspect of the matter and that one aspect is 27.08.2019 check slip issued by second respondent is not a mere check slip, but it is a refusal check slip. It was also pointed out that the caption itself says so.

6. To be noted, caption qua 27.08.2019 order reads 'Refusal Check Slip'. Further, as alluded to supra, a perusal of the refusal check slip reveals that the second respondent has refused to register the aforesaid sale deed dated 20.08.2019 presented for registration on 27.08.2019. Therefore, 27.08.2019 order of the second respondent is clearly an order refusing registration of the document presented for registration.

7. This takes us to the question as to whether an appeal will lie against aforementioned 27.08.2019 Refusal Check Slip under Section 72 of said Act. Section 72 of said Act reads as follows:

'72.Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.-(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether



compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.'

8. A perusal of Section 72 of said Act reveals that for an appeal to lie to the first respondent four (4) conditions need to be satisfied. First condition is that the order of refusal made by Sub-Registrar should be an order refusing registration of a document. Second condition is that the refusal should not be on the ground of denial of execution. Third condition is that the appeal should be presented within thirty (30) days from the date of order of Sub-Registrar. Fourth condition is that Registrar to whom an appeal is made should be one to whom Sub-Registrar is subordinate.

9. A perusal of the dissected components of Section 72 of said Act alluded to supra reveals with clarity and specificity that all the four (4) conditions are satisfied in the instant case.

10. To be noted, appeal has been preferred under Section 72 of said Act and Rule 166 of said Rules as mentioned supra elsewhere in this order. Rule 166 of said Rules captioned 'Appeals and Enquiries' reads as follows:

'166.(i) An appeal under Section 72 of the Act or an application under Section 73 shall be presented in writing to the Registrar of the district or to the officer in-charge of the Registrar's Office, accompanied by a copy of the refusal order appealed against and the original document in respect of which the order was passed.

(ii) When the document is stated to be in the possession of some person other than the appellant and the latter desire time to obtain and produce it or the issue of a summons for



its production, the request may be complied with and the appeal or application admitted pending receipt of the document.

It cannot be gainsaid that if a particular person or a witness fails to attend an enquiry before the concerned Registrar, then, the concerned Registrar/Authority is supposed to follow the relevant provisions of the Registration Act, 1908 coupled with rules 166, 167 and 171 of the Tamil Nadu Registration Rules, 1983. Rule 166 of the Tamil Nadu Registration Rules, 1983 deals with the contingency arising under Section 72 of the Act or an application as per Section 73 of the said Act.'

11. Learned State counsel pointed out that the refusal check slip has been returned, owing to execution of a 2012 document and natham patta. Refusal check slip was returned on the ground that a document is said to have been executed earlier and existence of what according to the Sub-Registrar is natham patta, is learned State counsel's say. This in the considered view of this Court is no argument to say that appeal under Section 72 of said Act read with Rule 166 of said Rules will not lie to the first respondent, as this Court is not examining the correctness or otherwise of the refusal check slip and this Court does not express any opinion on the merits of the matter.

12. Therefore, in the light of the narrative thus far and discussion set out supra, this Court is left with considered view that impugned order is liable to be set aside and the appeal to the first respondent dated 09.09.2019 is certainly maintainable and there is provision (Section 72 and Rule 166) under the said Act and said Rules. More importantly, in the instant case, on the undisputed factual matrix, writ petition is satisfied all the four (4) conditions required for invoking Section 72 of said Act.

13. Owing to the narrative and discussion thus far, the following order is passed:

(a) impugned order dated 09.09.2019 made by first respondent is set aside.

(b) first respondent is directed to take up the appeal dated 09.09.2019 (page Nos.35 and 36 of the typed set of papers forming part of the case file), hear the same on its own merits, in accordance with law and dispose of the same as expeditiously as possible and in any event, within eight (8) weeks from the date of receipt

of a copy of this order.



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(c) The order disposing of the appeal on its own merits and in accordance with law shall be communicated to the writ petitioner and any other party concerned under due acknowledgment within seven (7) working days from the date of the order.

(d) Though obvious, it is made clear that no opinion or view has been expressed by this Court on the merits of the matter and whatever has been said in this order is for the limited purpose of disposal of instant writ petition and therefore, first respondent is directed to consider the appeal on its own merits and in accordance with law.'

14. Instant Writ Petition is allowed and disposed of with the aforesaid directions. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The District Registrar,
Palayamkottai,
Tirunelveli District.

2.The Sub Registrar,
Sathankulam,
Tuticorin District.

+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-90132[F] dated 27/09/2019)

Order made in
W.P (MD)No.20882 of 2019
Dated:
27.09.2019

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