

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.25565 of 2016

P.Eswaramurthy

... Petitioner

Vs.

1.The Sub Registrar,
Avinashi,
Tiruppur District.
2.K.Rukmani
3.K.Maheswaran
4.K.Shanmugam

... Respondents

Petition filed under Article 226 of the Constitution of India for issuing a writ of mandamus directing the 1st respondent to entertain, register and release the Sale Deed dated 31.12.2015 presented on 02.03.2016 on the file of the respondent without insisting removal of mortgage entry in Doc.No.832 of 1945 by the return memo 02.03.2016.

For Petitioner : Mr.R.Prabakar

For Respondents: Mr.P.P.Purushothaman,
Government Advocate (R1)

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Mandamus directing the 1st respondent to entertain, register and release the Sale Deed dated 31.12.2015 presented on 02.03.2016 on the file of the respondent without insisting removal of mortgage entry in Document No.832 of 1945 by the return memo dated 02.03.2016.

2.The 1st respondent, by order dated 02.03.2016, refused to register the Sale Deed dated 31.12.2015, presented for registration on 02.03.2016, for the reason that there was an entry with regard to mortgage in Document No.832 of 1945. Further, the 1st respondent called upon the petitioner to remove the mortgage entry in the encumbrance.

3.It is pertinent to note that there will not be any bar for the Registering Authority to register the Sale Deed when there is a subsisting mortgage. The parties are transacting with the property subject to the mortgage in respect of the said

property. The Registration Act does not bar the owner of the property from executing a Sale Deed in respect of the property, which was already mortgaged. That apart, the mortgage was executed as early as in the year 1945 and the legal heirs, who are the original owners, are selling the property to a prospective buyer. Unless the Mortgagee raises an objection with regard to the registration of the Sale Deed, the Sub Registrar cannot refrain from registering the document.

4.Mr.R.Prabakar, learned counsel appearing for the petitioner submitted that the parties to the Sale Deed shall also file an affidavit before the 1st respondent to the effect that the Sale Deed to be registered is subject to the mortgage in Document No.832 of 1945.

5.In such view of the matter, in case the petitioner is presenting the Sale Deed dated 31.12.2015 for registration, along with the affidavits of the parties to the document, before the 1st respondent, I direct the 1st respondent to register the Sale Deed dated 31.12.2015, if the document is otherwise in order and release the same to the petitioner. However, the Sale Deed executed by the parties is subject to the mortgage in Document No.832 of 1945.

6.With these observations, the Writ Petition is disposed of. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Sub Registrar,
Avinashi, Tiruppur District.

+1 CC to The Govt. Pleader sr 33063.

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PP(CO)
SP(28/10/2020)