



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE. P.D.AUDIKESAVALU

WEB COPY

W.P. (MD)No.2991 of 2020

V.Sandhoshkumar

... Petitioner

Vs.

- 1.The District Registrar,
District Registrar Office,
Thanjavur District.
- 2.The Joint Sub Registrar,
No.1, Sub Registrar Office,
Kumbakonam, Thanjavur District.
- 3.Durairajan
- 4.Chithra

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari Mandamus, to call for the entire records relating to the impugned order passed by the 2nd Respondent in Refusal Number RFL/No.1 Joint Sub Registrar Kumbakonam/3/2020 dated 13.01.2020 and set aside the same as illegal and further directing the 2nd Respondent to register the sale agreement dated 13.01.2020 on the file of 2nd Respondent executed by the Petitioner to one S.Vijayan release the same.

For Petitioner : Mr.R.Maheswaran

For Respondents 1 & 2 : Mr.V.Anand
Government Advocate

For 4th respondent : Mr.R.Rajarajan

ORDER

The Petitioner is aggrieved by the refusal by the Second Respondent to register the document presented by him for registration in respect of the property, which forms the subject matter of the judgment and decree dated 15.11.2018 in O.S.No.412 of 2012, passed by the Principal District Munsif Court, Kumbakonam, as against which appeal in A.S.No.50 of 2019 is pending before the Additional Sub Court, Kumbakonam, in which he is not a party to the proceedings. It is, however, accepted that the suit in O.S.No.412 of 2012, on the file of the Principal District Munsif Court, Kumbakonam had been instituted by the vendor of the Petitioner for the relief of permanent injunction to protect his possession of the property,



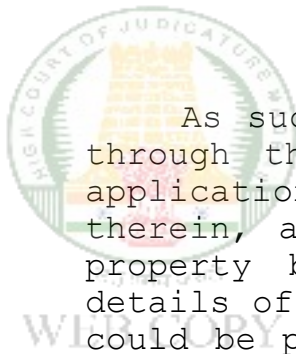
which was rejected by the said Court and it was only thereafter that the Petitioner has purchased the property by Sale Deed dated 25.10.2019 registered as Document No.5432/2019 before the District Registrar, Kumbakonam.

2. In this factual backdrop, reference may be made to Section 52 of the Transfer of Property Act, 1882, which reads as follows:-

"52. Transfer of property pending suit relating thereto:- During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

On a perusal of the aforesaid legal provision, it is evident that when the suit in respect of which immovable property is directly and specifically in question, any party to that suit, who intends to transfer or otherwise deal with such property, has to obtain the prior permission of the Court where such suit is pending and it would obviously include the appeal against the decree passed in such suit as well. Before proceeding further, it would also be useful to refer to the dictum of the Hon'ble Supreme Court of India in **CCE -vs- Dunlop India Limited** [(1985) 1 SCC 260], relating to the exercise of discretionary powers under writ jurisdiction, as follows:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."



As such, the Petitioner, who claims title to the property only through the appellant in the pending appeal, can make necessary applications before the Appellate Court for impleading himself therein, and seek permission for him to transfer or deal with the property by disclosing the nature of proposed transaction with details of the transferees so that appropriate orders in that regard could be passed on those applications, and the registration of any document could be made after following the procedure prescribed in Section 52 of the Transfer of Property Act, 1882. There is no explanation from the Petitioner in his affidavit filed in support of the Writ Petition as to why the procedure prescribed under Section 52 of the Transfer of Property Act, 1882, has not been followed by the Petitioner. In the absence of any prior permission of the Appellate Court, any adverse decision therein would certainly affect the rights of the purchaser of the property and would lead to multiplicity of proceedings, which would have to be averted.

3. Viewed from that perspective, there does not appear to be any infirmity in the impugned decision-making process followed by the Respondents warranting any interference by this Court in the exercise of discretionary process under Article 226 of the Constitution. Hence, it would not be possible to grant the relief as sought by the Petitioner in this Writ Petition.

4. In the result, this Writ Petition is dismissed with the aforesaid observations. No costs.

Sd/-

Assistant Registrar

/TRUE COPY/

/ /2020

Sub Assistant Registrar

To

1.The District Registrar,
District Registrar Office,
Thanjavur District.

2.The Joint Sub Registrar,
No.1, Sub Registrar Office,
Kumbakonam, Thanjavur District.

+1. C.C. to M/S.R.Maheswaran, Advocate SR.No. 10276

+1 cc to Special Government Pleader, SR.No. 10180

W.P. (MD)No.2991 of 2020

04.03.2020

sj

<https://hcsn/Service/Record/1/1/1803.2020/3P/5C>