

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2021

CORAM:

THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.5623 of 2021

D.Subramanian

...Petitioner

-Vs-

- 1.The Sub Registrar,
Office of the Sub Registrar, Thirunavalur,
Cuddalore Registration District,
Villupuram 607 204.
- 2.The Deputy Registrar,
Office of the Deputy Registrar, Cuddalore District,
No.15, Integrated Building, First Floor,
Sankara Naidu Street, Tirupadiripuliyur,
Cuddalore 607 001.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents herein to register the sale deed document bearing TP/95761326/2020.

For Petitioner : Mr.N.Sakthivel

For Respondents : Mr.T.M.Pappiah, SGP

ORDER

This Writ Petition is filed for a writ of Mandamus, to direct the respondents herein to register the sale deed document bearing TP/95761326/2020.

2. The petitioner seeks a direction to the Sub Registrar, Kootadi Village, Ulundurpet Taluk, Villupuram District (now Kallakurichi District) for registering the sale deed bearing TP/95761326/2020. The said sale deed has been executed by the petitioner herein and it deals with the property comprised in S.No.39/3B of Kootadi Village. The Sub Registrar has refused for registration on two grounds:

- (a) that the property in question has been mortgaged to a third party; and that it was also involved in O.S.No.303 of 2012, before the First Additional Sub Court, Villupuram;
- (b) seek a certain Charumathi has acquired a right over the

property Vide decree in O.S.No.141 of 2011.

3. The purchaser under the sale deed, has offered his explanation dated 17.11.2020. In his explanation, he has stated :

- (a) That the mortgage stated have been discharged;
- (b) O.S.No.141 of 2011 has been compromised between the parties.
- (c) O.S.No.303 of 2012 was laid by one Kandasamy against the aforesaid Charumathi for specific performance and that has been decreed. And the petitioner is not a party to this suit.

4. The learned counsel for the petitioner submitted that mere pendency of the suit ifso facto does not restrain the Sub Registrar from registering the document, since Section 52 of the Transfer of Property Act, does not bar transfer of property, but only makes such transfer subject to the final outcome of the litigation. In this context, so far as O.S.No.303 of 2012 and O.S.No.141 of 2011 are concerned, the petitioner is not even a party.

5. Heard Mr.T.M.Pappiah, learned Special Government Pleader for the respondents.

6. This Court finds merit in the submission of the learned counsel for the petitioner. The petitioner herein appears to have purchased a property from one Vijaya, Parimala, Vennila and Palaniammal. They are all defendants in O.S.No.141 of 2011, filed by their sister Charumathi for partition. Though the copy of the judgment is available in the typedset of papers, it is not adequately known about the properties involved therein. It is now apparent that inasmuch as the petitioner has purchased the property from the defendants in O.S.No.141 of 2011, necessarily, the petitioner is entitled to transfer their share in the suit property to any person of his choice. At any rate, even if he tries to deal with any property more than his just entitlement, still it would be subject to the decree in O.S.No.141 of 2011. So far as the O.S.No.303 of 2012, is concerned, it appears to be a suit for specific performance and here again the decree holder therein can claim right only to the extent of the property to which Charumathi is entitled to.

8. Therefore, in these circumstances, this Court finds that this a case where the Sub Registrar has to revisit his earlier decision and consider the explanation given by the petitioner, and decide the same denovo as outlined above.

9. Accordingly, this Court set aside the refusal of the Sub Registrar to register the document. The matter is remanded back to the concerned Sub Registrar and he shall now take a fresh call on registering the sale deed bearing 117/95/61326/2020, within a scope provided by Section 34 of the

Registration Act and in accordance with the ratio laid down in the case of N.Ramayee Vs. Sub Registrar [(2020) 8 MLJ 305] and register the sale deed subject to the same.

10. This writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gsk
To

- 1.The Sub Registrar,
Office of the Sub Registrar, Thirunavalur,
Cuddalore Registration District,
Villupuram 607 204.
- 2.The Deputy Registrar,
Office of the Deputy Registrar, Cuddalore District,
No.15, Integrated Building, First Floor,
Sankara Naidu Street, Tirupadiripuliyur,
Cuddalore 607 001.

+3ccs to Mr.N.Sakthivel, Advocate SR.No. 16415
+1 cc to Government Pleader Sr.No. 16904

W.P.No.5623 of 2021

A.SK(09.04.2021)

सत्यमेव जयते
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