

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM : JUSTICE N.SESHASAYEE

W.P.No.6165 of 2021
and WMP.6782 of 2021

Perumal

... Petitioner

Vs

1. The Sub Registrar,
Gangavalli Sub Registrar Office,
Salem East,
Kadampur Road,
Gangavalli,
Tamil Nadu - 636 105.

2. Chinnammal

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to call for the records in RFL/Gangavalli/9/2020 on the file of the respondent dated 12.11.2020 and quash the same as illegal, incompetent without jurisdiction and further direct the respondent to register the sale deed presented on 04.11.2020 Vide receipt No.REG202011044984280.

For Petitioner : Mr.V.Raghavachari
For Respondents : Mr.T.M.Pappiah
Special Government Pleader [R1]
Mr.L.Rajendran [R2]

ORDER

The petitioner has executed a sale deed dated 04.11.2020 in favour of a third party as concerning 20.5 cents, out of 65 cents in S.No.215/4B in Gangavalli Village. This property is the subject matter of O.S.No.289/2020 on the file of Sub Court, Attur. This suit is laid for partition by the second respondent herein claiming half share, and the property in question (S.No.215/4B) is described in I Schedule to the plaint. When the sale deed dated 04.11.2020 was presented for registration, it was refused to be registered by the first respondent on the ground that the suit in O.S.No.289/2020 is pending.

2.Mr.V.Raghavachari, learned counsel for the petitioner submitted that the petitioner has the probability of success in the suit, and even if the second respondent succeeds in the suit, according to her claim, she will be entitled only to an extent of some 32.5 cents in S.No.215/4B, whereas the petitioner now deals only with 20.5 cents. Secondly, the pendency of a suit for partition, for that matter, pendency of any suit does not operate as a bar for transfer of title by any of the parties to the suit, since the same would then be subject to the outcome of the suit in terms of Section 52 of the Transfer of Property Act. However, if it is a partition suit, such purchaser even though obtain possession, can still seek certain equities in the matter of allotment of specific share during the final decree, but still the transaction cannot be prevented. He also added that the trial Court has not passed any order of interim injunction restraining any transfer of property.

3. Mr.L.Rajendran, learned counsel appearing for the second respondent argued on instructions that the transfer of title during the pendency of the suit is only going to complicate the issue. He added, even though pendente lite transfer is subject to the outcome of the suit, there is no need that a pendente lite conveyance must necessarily take place. He further submitted that in the suit, the second respondent has also sought a relief of permanent injunction against alienation, and the trial Court has to take final call on the same.

4. Heard Mr.T.M.Pappiah, learned Special Government Pleader for the first respondent. He submitted on instructions that the pendency of the suit in O.S.No.289/2020 is not the only ground on which the impugned order came to be passed. The other ground for refusal of registration is that the parent document has not been produced before the Sub Registrar concerned.

5.1 The issue is not about the legitimacy or the permissibility of the pendente lite transfer, but the authority of the Sub Registrar to refuse registration of the sale deed so presented to him. The Sub Registrar concerned cannot refuse transfer, subject to those covered under Sections 19, 23 and 35 of the Registration Act. Mere pendency of suit cannot be a ground on which the registration can be denied. Therefore, this Court considers it appropriate to direct the Sub Registrar, Gangavalli /first respondent to register the document viz., sale deed dated 04.11.2020, within a period of two weeks from the date of receipt of a copy of this order.

5.2 The petitioner is now required to present the sale deed dated 04.11.2020 again before the first respondent forthwith along with an affidavit stating as to why the parent document

could not be produced, whereupon the first respondent shall hold necessary enquiry within the meaning of Section 34 and 35 of the Registration Act, and register the same if the document is otherwise registrable. However, the ground which the Sub Registrar has already raised in the check slip is no longer available for him/her to refuse registration.

6. If the second respondent is aggrieved by the proposed registration of the sale deed, which is now directed by this Court, he may so challenge it in the pending suit.

7. The writ petition is disposed of in the manner indicated. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

DS

To:

The Sub Registrar,
Gangavalli Sub Registrar Office,
Salem East,
Kadampur Road,
Gangavalli,
Tamil Nadu - 636 105.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.20855
+1cc to Mr.L.Rajendran, Advocate, S.R.No.21125

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PCH(CO)
TE (30/04/2021)

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