



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.8913 of 2019

D.Sivakumar,
S/o. S.R.Dakshinamoorthy

...Petitioner

Vs.

1. The Joint Sub-Registrar No.1 -
(District Registrar),
Registration Department,
Collectorate,
Coimbatore-641 018.

2. Dhavamani,
S/o. Kannusamy

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, by calling for the records relating to the order dated 27.02.2019 - on the file of the first respondent herein - made in respect of the sale agreement dated 27.02.2019 submitted by the petitioner herein - quash the same and consequently direct the first respondent herein to register the sale agreement dated 27.02.2019 submitted by the petitioner.

For Petitioner : Mr.V.Lakshminarayanan for
M/s.Kingsly Solomon J.

For Respondents : Mr.K.M.D.Muhilan,
Government Advocate for R1

Mr.C.Prakasam for R2

O R D E R

(The case has been heard through video conference)

The Writ Petition has been filed challenging the order passed by the 1st respondent Joint Sub-Registrar refusing to register sale agreement on the ground that already in respect of same property, another sale agreement has been registered.



2. Brief facts leading to the filing of Writ Petition is as follows :-

The petitioner is the owner of property in T.S.No.145/6, situate at Door No.509, Dr.Nanjappa Road, Srinivasapuram Extension, Coimbatore. Earlier, he has entered into a sale agreement with the 2nd respondent herein on 23.01.2017 and the same was also registered by the 1st respondent Joint Sub-Registrar. Thereafter, once again, the petitioner has entered into another sale agreement with one Thirugnanam, on 27.02.2019, and presented the same for registration, that was refused by the 1st respondent on the ground that, already the sale agreement in respect of same property was registered and a second agreement cannot be registered. Challenging the same, the present Writ Petition has been filed by the petitioner.

3. Mr. V.Lakshminarayanan, learned counsel appearing for petitioner would submit that, the agreement of sale registered in respect of immovable property will not be a bar for the owner of property to effect subsequent transfer, and the 1st respondent has no right to refuse to register the document. According to the learned counsel, except the documents mentioned under Sec.22-A, of Tamil Nadu Registration Act, the 1st respondent Joint Sub-Registrar cannot refuse to register any other documents. In support of his contentions, he has relied upon recent judgment of this court passed in W.P. No.674 of 2020 dated 05.11.2020 in the matter of N.Ramayee Vs. The Sub-Registrar, Registration Department, Salem.

4. Mr.C.Prakasam, learned counsel appearing for 2nd respondent/previous agreement holder, would vehemently content that, the petitioner is not the owner of property and the property belong to a firm, in which, the petitioner's father was a partner, without consent of other partner, the petitioner's father executed a settlement deed in favour of the petitioner. Based on that, he has entered into a sale agreement with the 2nd respondent and received a part of consideration of more than Rs.1 crore. Thereafter, without executing the sale deed, now, he has entered into another sale agreement with a third party and cheated the 2nd respondent. The sale agreement already registered is in existence in favour of 2nd respondent, and without cancelling the same, the petitioner cannot enter into a second sale agreement. Hence, the 1st respondent Joint Sub-Registrar has rightly rejected the petitioner's document and there is no illegality in the order passed by the 1st respondent.

5. Heard the rival submissions made by learned counsel appearing for petitioner as well as learned Government Advocate and the learned counsel appearing for 2nd respondent and perused the records.



6. The admitted fact is that, the petitioner earlier entered into a sale agreement with the 2nd respondent, and the same was also registered with the 1st respondent. Pending registration of sale deed, now he has entered into another sale agreement with a third party and that sale agreement is sought to be registered. Now, the question is that, whether the existence of earlier sale agreement is a bar for registering another sale agreement in respect of same property. The issue is no more res integra, a Division Bench of this court, in W.P. No.674 of 2020 dated 05.11.2020, in the matter of N.Ramayee Vs. The Sub-Registrar, Registration Department, Salem, has held that, the agreement of sale registered in respect of immovable property is not a bar for registering subsequent document. The relevant portion of the order reads as follows :-

"37. Accordingly, we answer the reference as follows :-

If an agreement for sale is registered in respect of immovable property, the same will not be a bar for the owner of the property to effect subsequent transfers in respect of the same property. The Registrar has no right to refuse to register the document except the documents relating to immovable properties mentioned in Section 22-A of the Tamil Nadu Act and as contemplated under Rule 162 of the Registration Rules.

40. As already indicated, the purpose of registration is only to give a public notice. It is for the buyer or subsequent transferee to make reasonable enquiry. Doctrine of caveat emptor will also apply to every transfer. It is for them to verify the title of the property by making reasonable enquiry. At any event, subsequent transfer will always be subject to the rights already created. Therefore, it cannot be said that merely because agreement for sale is registered without obtaining decree of declaration that such agreement is void, subsequent transfer is prohibited and cannot be registered. We hold that as discussed in our judgment, Registrar has no right to refuse to register the subsequent document on the basis that agreement of sale was already registered in respect of same property. Accordingly, the reference is answered."

Considering the above judgment of the Division Bench, registering a second sale agreement is not prohibited and the 1st respondent Joint Sub-Registrar cannot refuse to register the sale agreement. Hence, the impugned order passed by the 1st respondent is liable to be set aside. If at all, the sale agreement is in existence, it is always open to the 2nd respondent to approach proper forum to redress his grievance and



he cannot raise objections for registering another sale agreement. Accordingly, this Writ Petition stands allowed. The 1st respondent Joint Sub-Registrar is directed to register the document, if the document is found to be otherwise in order, within a period of six weeks from the date of receipt of the copy of this order. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rpp

To

The Joint Sub-Registrar No.1 -
(District Registrar),
Registration Department,
Collectorate, Coimbatore-641 018.

+1 CC to Mr.Kingsly Solomon, Advocate, Sr 33498.

W.P.No.8913 of 2019

AK-II(CO)
LS(06/08/2021)