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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.2474 OF 2021
AND C.M.P.NO.15995 OF 2021

1. P.Manivasagam

2. G.Maruthachalam

...Appellants/Petitioners

Vs.

1.The Inspector General of Registration,
Office of the Inspector General of Registration,
100, Santhome High Road,
Chennai-600 028.

2.The Sub Registrar,
Sulur, Coimbatore-641 402.

3.S.Sellpandi
Sub Registrar,
Sulur, Coimbatore-641 402.

4.Saranya S.Kumar

5.A.Duraisamy

...Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 25.06.2021 passed in W.P.No.11651 of 2021.

Prayer in W.P.11651 of 2021 : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the the First Respondent to instruct the Second Respondent not to register any kind of document in respect of



the properties which are subject matter of the O.S.No.280 of 2021, on the file the III Additional Subordinate Judge, Coimbatore.

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For Appellants : Mr.K.Venkatesan

For Respondents : Mr.C.Jayaprakash
1 & 2 State Government Counsel

J U D G M E N T

(Judgment was delivered by Pushpa Sathyanarayana, J.)

The unsuccessful writ petitioners are the appellants laying challenge to the order of the writ Court dated 25.06.2021 passed in W.P.No.11651 of 2021, wherein and whereby, the direction sought for to the first respondent to instruct the second respondent not to register any kind of document in respect of the properties which are subject matter of O.S.No.280 of 2021 on the file of the III Additional Subordinate Judge, Coimbatore, was negatived.

2. The case of the appellants is that they formed a partnership firm along with the fourth respondent and commenced business on 03.02.2015. In the course of their business, when they wanted to develop a property as a layout, which was owned by the fifth respondent, after advancing huge sums of money to him, they also inducted him in the partnership firm. Alleging that the fourth and fifth respondents have not accounted the advances received for the sale of the plots, the appellants instituted a suit in O.S.No.280 of 2021 on the file of the III Additional Subordinate Court, Coimbatore, seeking a direction to the third defendant therein, who is the fourth respondent herein, to dissolve the partnership business carried on in the name and style of Sai.Saranya Developers and Promoters for the suit property and to grant permanent injunction restraining the third defendant from entertaining, registering, creating encumbrance over the suit properties. In spite of the same, the fourth respondent herein, the third defendant, has been receiving sale consideration from the prospective buyers, which forced the appellants to serve a notice on the first respondent herein marking copy to the second respondent and other private respondents seeking, inter alia, to cancel the sale deed



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executed by the fourth respondent. The alleged inaction on the part of the official respondents culminated into the filing of the writ petition seeking the above said relief and the dismissal of the same led to the present appeal.

3. Heard the learned counsel appearing on behalf of the appellants and the learned State Government Counsel and perused the materials placed before this Court. In view of the order that we propose to pass, no notice is ordered to the private respondents.

4. Admittedly, there is a dispute among the partners in the partnership firm. The grounds raised by the learned counsel for the appellants also make it amply clear that they are all matter for trial and the writ Court exercising the jurisdiction under Article 226 of the Constitution cannot issue the directions, as sought for by the writ petitioners - the appellants herein, to resolve such disputes in the partnership firm. The appellants cannot invoke the writ jurisdiction, merely adding the statutory authorities as parties and seeking a direction to them not to discharge their statutory duties, without taking recourse to the appropriate remedy under the Code of Civil Procedure, which the appellant had rightly taken by filing the suit in O.S.No.280 of 2021, as indicated in the narration of facts.

5. It is for the registering authorities to follow the law governing the subject such as Registration Act and rules made thereon, including the amendments made from time to time and also the guidelines and circulars of the Department, which are in tune with the Statute and for any failure, they have to subject themselves for appropriate action by the Department, so also the statutory authorities.

6. This Court reminiscences of the ordinary rule in contract jurisprudence "Caveat emptor". Applying the said maxim, it is unequivocally clear that it is the bounden duty of the purchaser to make all such necessary enquiries and to ascertain all the facts relating to the property to be purchased prior to committing in any manner. Of-course, the fourth respondent is liable for her acts and deeds, if she breaches the terms of the partnership deed, but the appellants cannot invoke the writ jurisdiction to prevent her action.



7. Caveat emptor qui ignorare non debuit quod jus alienum emit. A maxim meaning "let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another". As the maxim applies to the title to the land which is sold, the purchaser is generally bound to view the land and to enquire after and inspect the title deeds and is at peril if he does not do so.

8. The learned State Government Counsel relied on the judgment of a Coordinate Bench in N.Ramayee V. Sub-Registrar, Registration Department, 2020 (6) CTC 697, wherein, the Division Bench was tasked to settle the two directly contradictory views of this Court expressed in N.Raju V. District Registrar, Trichy and another [W.P.(MD)No.24429 of 2018, dated 07.03.2019] and Venkatamma V. Sub-Registrar, Hosur and another [W.P.No.33601 of 2019, dated 02.12.2019]. While answering the reference, our Co-ordinate Bench made the following observations :

"45.[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.

46.[38] It is also brought to our notice about the new circular in No. 24011/C1/2020 dated 08.10.2020. It is the contention of the learned Additional Advocate General that the Registrar has power to regulate the registration in order to prevent fraud and hence, the Registrar is having powers under the Registration Act to regulate the registration and the right to refuse the document and that such power is available under Section 71 of the Registration Act. Such contention is not acceptable for the simple reason that the circular bars transfer of property on the ground that when a lease is already executed in respect of the property, without expiry of the lease, transfer cannot be permitted or without consent of lessee no registration is permissible. Further, insisting a no objection from mortgagee before registration is also against the very substantive provision of law. If any property is sold with existing mortgage, the transferee steps into the shoes of mortgagor. He has the right to redeem the property by paying the mortgage money. Therefore in the name of regulating the



registration, any circular which is in the nature of violating the substantive provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law. If the contention of learned Advocate General that without seeking declaration and cancellation of the agreement of sale, subsequent agreement or transaction cannot be registered, is accepted then such restriction, in fact, infringes the very Constitutional right of the citizen provided under Article 300 A of the Constitution.

47.[39] We are of the view that except as provided in the Registration Act and any other statute, the Registrar has no power to refuse to register a document. Though the object of the Act is to prevent fraud, such occasion arises only where some private properties are notified under the Tamil Nadu Private Forest Act. In such case, sale of such property without permission of the Collector of the District is void. Only when such notification is available in respect of any property, the Registrar can verify whether the sanction of the Collector is obtained or not. Similarly, whenever properties have been declared as forest land or elephant corridor, etc., and the notification is available with the Registrar, based on the above notification he can exercise power. Except the above, the Registrar has no power to refuse to register the document.

48.[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 judgement, 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. Post the writ petition in W.P.No.674 of 2020 before the learned single judge for disposal."

9. In such view of the matter, we are of the view that the writ Court rightly directed the appellants to approach the Civil Court for appropriate relief refusing to grant the relief



sought for by the appellants/writ petitioners stating that they cannot maintain a writ petition.

10. In the result, we do not find any merit in the appeal and this writ appeal is, accordingly, dismissed as devoid of merit, upholding the order impugned. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

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To

1.The Inspector General of Registration,
Office of the Inspector General of Registration,
100, Santhome High Road,
Chennai-600 028.

2.The Sub Registrar,
Sulur, Coimbatore-641 402.

+1cc to Mr.K.Venkatesan, Advocate SR.No.51396

+1cc to the Government Pleader SR.No.51558

W.A.No.2474 of 2021

GSM(CO)
RVM(25/10/2021)