



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.11.2021

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WEB COPY

THE HONOURABLE Mr. JUSTICE G.K.ILANTHIRAIYAN

WP.No.23749 of 2021

S.Gunasekar

... Petitioner

Vs

1.The Sub Registrar,
Sub Registrar Office,
Purasaiwalkam, Chennai

2.Inspector General of Registration,
Santhome High Road,
Chennai 600 028

... Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order "refusal check slip", dated 17.09.2021 in Ref.No.RFL/PURASAIVAKKAM/BOOK 2.10.2021 passed by the first respondent in respect of the pending document P.No.89/2021 relating to the sale of the property bearing Plot No.99, Old Door No.9, new door.38/1, Ramakrishnan Street, Perambur, Chennai - 600 011, comprised in S.No.461/60 of Perambur Village block No.024, measuring an extent of 709 sq.ft. together with 4 feet passage from the street to the property measuring 114.66 sq.ft. totally measuring 823.66 sq.ft. executed by the vendor P.R.Jayanthi and quash the same and further directing the first respondent to receive the pending document P.No.89 of 2021 and register the same in accordance with law.

For Petitioner : Mr.R.Manickavel

For Respondents : Mr.Yogesh Kannadasan,
Government Advocate

ORDER

This writ petition is filed to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order "refusal check slip", dated 17.09.2021 in Ref.No.RFL/PURASAIVAKKAM/BOOK 2.10.2021 passed by the first respondent in respect of the pending document P.No.89/2021



relating to the sale of the property bearing Plot No.99, Old Door No.9, new door.38/1, Ramakrishnan Street, Perambur, Chennai - 600 011, comprised in S.No.461/60 of Perambur Village block No.024, measuring an extent of 709 sq.ft. together with 4 feet passage from the street to the property measuring 114.66 sq.ft. totally measuring 823.66 sq.ft. executed by the vendor P.R.Jayanthi and quash the same and further directing the first respondent to receive the pending document P.No.89 of 2021 and register the same in accordance with law.

2. The petitioner has purchased the land and building bearing plot No.99, old door No.9, new door No.38/1 situated at Ramakrishnan Street, Perambur, Chennai in old RS.No.461 part, new re-survey No.462/29 as per patta S.No.461/60 admeasuring 709 sq.ft. together with 4 feet passage (hereinafter called as 'subject property') from one, Jayanthi for valid sale consideration by the registered sale deed dated 20.07.2021 as pending document No.P89 of 2021 on the file of the first respondent. The petitioner along with his vendor presented the said sale deed for registration. However, it was not registered and kept as pending document No.P89 of 2021. The first respondent refused to register the same and issued the impugned check slip dated 02.10.2021.

3. On perusal of the records, revealed that the petitioner's vendor had an issue with one, M.Arumugam with relates to the earlier sale agreement. The vendor of the petitioner borrowed a sum of Rs.20,00,000/- from the said Arumugam on execution of agreement for sale with regards to the subject property. On the strength of the agreement for sale, the said Arumugam filed suit in CS.No.114 of 2017 and obtained exparte decree. On the strength of the exparte decree, he also filed execution petition and obtained sale deed in his favour. However, the petitioner's vendor filed an application before this Court to set aside the exparte decree and it was set aside and consequential sale deed executed in favour of the said Arumugam is also cancelled. Now the said suit has been transferred to the file of the City Civil Court and renumbered as OS.No.5616 of 2021 and it is pending for adjudication. While being so, the petitioner purchased the subject property from his vendor for valid sale consideration and presented the sale deed for registration. However, the first respondent refused to register the same for the reason that the suit is pending in respect of the same property.

4. The learned counsel for the petitioner relied upon the judgment in the case of N.Ramayee Vs. The Sub Registrar, Registration Department, Salem reported in 2020 (6) CTC 697 rendered by the Hon'ble Division Bench of this Court, which was also confirmed by the Hon'ble Supreme Court of India in SLP.No.4844 of 2021 dated 05.04.2021. Accordingly, it is



settled principles of law that pending suit or prior registered agreement of sale or mortgage deed is not a bar for registration of sale deed or conveyance. In fact, the said Arumugam is well protected under Section 52 of Transfer of Property Act and the benefit of lispendence. Therefore, the vendor cannot be indefinitely restrained from transferring or conveying the subject property due to the pendency of the civil suit.

5. It is also relevant to rely upon the judgment in the case of Sanjay Verma Vs. Manik Roy & Others reported in 2006 (13) SCC 608, wherein the Hon'ble Supreme Court of India held that mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The Section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court.

6. In the case of N.Ramayee Vs. The Sub Registrar, Registration Department, Salem reported in 2020 (6) CTC 697, the Hon'ble Division Bench of this Court held 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 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. The Hon'ble Supreme Court of India further held that 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.

7. Therefore, mere pendency of the suit is not an impediment for the first respondent to register the sale deed. Admittedly, no interim order was passed as against the first respondent to decline the registration of document with regards to the subject property. When it being so, the impugned order cannot be sustained and it is liable to be set aside. Accordingly, the impugned order dated 17.09.2021 is set aside and the writ petition is allowed. The first respondent is directed to register the document which is kept pending as pending document P.No.89 of 2021 and release the same within a period of four weeks from the date of receipt of copy of this order. No order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Registrar,
Sub Registrar Office,
Purasaiwalkam, Chennai

2.Inspector General of Registration,
Santhome High Road,
Chennai 600 028.

+1 cc to Mr.R.Manickavel, Advocate Sr.NO. 57471
+1 cc to Government Pleader Sr.NO. 57888

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PVS (CO)
A.SK(09.12.2021) .