



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD)No.7420 of 2020
(Through Video Conferencing)

WEB COPY

A.Manimegalai

... Petitioner

Vs.

1.The Sub Registrar,
Kulithalai
Karur District.

2.T.Sankar

3.T.Thangavel

4.N.Gokula Kannan

5.Amudha Gokula Kannan

6.Minor. Poornima

7.Minor Dhashvika

8.Kannan

9.Vinatha

... Respondents

(R8 and R9 have been impleaded
vide order of this Court dated 08.02.2021
in W.M.P. (MD) No.10585/2020)

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relating to the proceedings of the 1st respondent made in Check slip dated 06.05.2020 in respect of TP/90065698/2020 and quash the same.

For Petitioner

:Mr.K.Govindarajan

For Respondents

:Mr.M.Lingadurai for R1
Government Advocate

Mr.G.Prabhu Rajadurai for R4

Mr.V.Vishnu for R2 & R3



ORDER

This writ petition has been filed challenging the impugned refusal check slip dated 06.05.2020 issued by the first respondent refusing to register the document that was presented for registration on the ground that the original mortgage documents have not been presented at the time of registration.

2. The case of the petitioner is that the subject property belongs to the 4th respondent. The 4th respondent had mortgaged the property to the second and third respondents and the mortgage deed was also registered on 04.11.2019 and 28.11.2019. The further case of the petitioner is that the 4th respondent decided to sell the property in favour of the petitioner and accordingly, the sale deed was prepared on 06.05.2020. When the same was presented for registration before the first respondent, it was refused to be registered on the ground that the original documents have not been presented. Aggrieved by the same, the present writ petition has been filed before this Court.

3. The learned counsel for the petitioner submitted that the petitioner had totally paid a sum of Rs.16 lakhs to the 4th respondent. It was further stated that this amount was paid by the petitioner for the purpose of clearing the mortgage dues and also to meet some emergency expenses. That apart, the 4th respondent had also stated that the share belonging to the minors will also be deposited in the name of the minors in the post office deposit. The learned counsel for the petitioner submitted that the first respondent went wrong in refusing to register the sale on the ground that the original mortgage deeds were not enclosed. It was further submitted that this Court had repeatedly held that the first respondent does not have the power or jurisdiction to insist for the production of original documents. The learned counsel for the petitioner brought to the notice of this Court a subsequent development that had taken place in this case, wherein, the 4th respondent has proceeded to sell the subject property to some other person. It was therefore, submitted that the petitioner wants to proceed against the 4th respondent by way of filing a suit for specific performance before the competent Court and work out her remedy in accordance with law.

4. Per contra, the learned counsel for the 4th respondent, by placing reliance upon the counter affidavit filed by the fourth respondent submitted that the fourth respondent had received only a sum of Rs.10 lakhs from the petitioner and the 4th respondent believed that the document in question is only a loan document and the fourth respondent never intended to sell the property to the petitioner. The learned counsel further submitted that the 4th



respondent is willing to refund the entire amount received from the petitioner along with interest and the 4th respondent does not want to deprive the petitioner what is due and payable to him.

5. In reply to the said submission, the learned counsel for the petitioner submitted that the petitioner is not willing to get the refund from the 4th respondent and the petitioner wants to proceed further against the fourth respondent by filing a suit for specific performance.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. In the considered view of this Court, the impugned refusal check slip issued by the first respondent is unsustainable in law, since the first respondent is not vested with the power or jurisdiction under the Registration Act to insist for the production of the original documents. This position of law has been made clear in the recent judgment of this Court in ***Sivanadiyan v. Sub Registrar, Pudukottai, Pudukottai District*** reported in ***2021 (2) CTC 526***. Therefore, the impugned refusal check slip issued by the first respondent is liable to be interfered with by this Court and the same is accordingly quashed.

8. Since the petitioner is not willing to accept the offer made by the fourth respondent, it is left open to the petitioner to work out her remedy before the competent civil Court and proceed further in accordance with law.

9. The writ petition is allowed accordingly. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To
The Sub Registrar,
Kulithalai, Karur District.

+1 CC to SPL GP (SR-20464[F] dated 28/06/2021)

+1 CC to MR.K.GOVINDARAJAN, Advocate (SR-20494[F] dated
29/06/2021)

+1 CC to MR.G.PRABHURAJADURAI, Advocate (SR-20496[F] dated
29/06/2021)

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25.06.2021

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KM(08.07.2021) 4P 5C