



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2021

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P. (MD)No.17602 of 2021

and

W.M.P. (MD)Nos.14499 and 14501 of 2021

WEB COPY

K.Govindaraj

... Petitioner

vs.

1.The Sub Registrar,
Panpoli, Sengottai Taluk,
Tenkasi District.

2.Samsudeen Makkay

... Respondents

(R2 was impleaded vide order of this Court in W.M.P.(MD)No.15218 of 2021, dated 10.11.2021)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating the impugned check slip issued by the first respondent in RFL/Panpoli/Book/2/5/2021, dated 20.07.2021 and quash the same as illegal and consequently, to direct the first respondent to entertain documents presented by the petitioner for registration and register the same in accordance with law.

For Petitioner	:Mr.Ajmal Khan Senior Counsel for M/s.Ajmal Associates
For R1	:Mr.N.Satheesh Kumar Additional Government Pleader
For R2	:Mr.M.Subash Babu

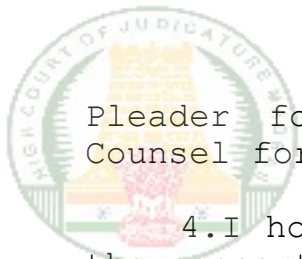
O R D E R

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with the check slip issued by the first respondent/Sub Registrar, Panpoli, Shengottai Taluk, Tenkasi District, in RFL/Panpoli/Book/2/5/2021, dated 20.07.2021 and to quash the same and to issue a further direction to the first respondent to register the document presented by the petitioner.

2.During the pendency of the Writ Petition, by a direction in W.M.P.(MD)No.15218 of 2021, dated 10.11.2021, the second respondent has been impladed as party to the Writ Petition.

3.Heard Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner, Mr.N.Satheesh Kumar, learned Additional Government

<https://hcservices.ecourts.gov.in/hcservices/>



Pleader for the first respondent and Mr.M.Subash Babu, learned Counsel for the second respondent.

4.I hope that I do not enter into a discussion on the title of the property. The property under dispute is situated at S.No.212/1, measuring 1.70 acres, as stated by the learned Senior Counsel for the petitioner and is S.No.212/2, measuring 1.28 acres, at Kanakupillaivazhasai Village, Sengottai Taluk, Panpoli, Tenkasi District. The Writ Petitioner claims that he had purchased the said property for valuable consideration by a registered sale deed, dated 01.09.2017, registered as Doc.No.1435/2017 on the file of the Sub Registrar, Panpoli, who is the first respondent herein. Subsequently, the petitioner presented a power of attorney document for registration. That power of attorney document had been refused to be registered by the first respondent, which has led to the filing of the present Writ Petition.

5.On the face of it, it can be seen that it is a case where, a direction can be issued to the Sub Registrar to register the said power of attorney document. However, there are further facts, which necessitate further examination. The property under dispute was purchased by the petitioner herein from his vendor, who was facing a litigation. The said litigation was a partition suit and separate division of the entire property was sought. It was claimed in that particular suit that the vendor of the petitioner herein was entitled only to an undivided 1/4th share in the said property. It is obvious that the vendor of the petitioner herein, who is entitled only 1/4 undivided share, pending suit, had however sold the entire property to the petitioner herein.

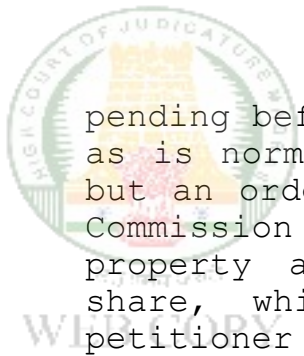
6.That litigation was in O.S.No.54 of 2004, which was at that point of time pending on the file of the IV Additional District Court, Tirunelveli. The second respondent, who has been impleaded, is the plaintiff in the said suit.

7.Let me not enter into any further discussion on the issues in that particular suit. They are matters to be examined only by the concerned Civil Court. The entire issues are purely between the vendor of the Writ Petitioner and the second respondent.

8.Be that as it may, O.S.No.54 of 2004 proceeded in its normal manner and a preliminary decree was passed on 29.09.2016 in favour of the second respondent. In that preliminary decree, again, the share of the vendor of the Writ Petitioner was crystallised into an undivided 1/4th share. This naturally meant that a final decree will have to be passed demarcating the said 1/4 undivided share, which share alone the Court had held was the entitlement of the vendor of the petitioner.

9.Questioning that particular preliminary decree, A.S.(MD) No.126 of 2018 had been filed and I am informed that the same is

<https://hcnvcs26courts.gov.in/2018/09/26/>



pending before this Court. An order of interim stay was granted, but as is normal indicating that final decree application can proceed, but an order should not be passed. This would also indicate that a Commission can be appointed to proceed further to demarcate the property and more particularly, to demarcate the 1/4 undivided share, which alone is the entitlement of the vendor of the petitioner herein.

10. At this stage, the petitioner had presented a power of attorney document for registration and in the schedule to the said power of attorney, the entire property had been shown. This document had been refused to be registered by the Sub Registrar by way of issuing, what is commonly called, a check slip. In that particular check slip, he had also stated that the vendor of the petitioner will get only an undivided 1/4th share in accordance with the decree in O.S.No.54 of 2004.

11. Mr. M. Ajmal Khan, learned Senior Counsel for the petitioner assailed this particular reasoning of the Sub Registrar, stating that a document lawfully presented, if it is otherwise in order, if it is stamped in accordance with the provisions of Indian Stamp Act, 1899, and if registration charges are paid in accordance with the Registration Act, 1908, then the registration of such a document cannot be denied or refused by the Sub Registrar. It is also stated by the learned Senior Counsel that the Sub Registrar is not an authority to examine the title of the petitioner's property and therefore, the reasoning that the petitioner had only 1/4th share and therefore, the document should not be registered, exceeds the jurisdiction and discretionary authority granted to the Sub Registrar and the learned Senior Counsel insisted that a direction should be given to register the document.

12. The learned Senior Counsel also placed reliance on the judgment of a Division Bench of this Court, in which, I was the Senior Judge and reported in **2020 (6) CTC 697** in the case of **N. Ramayee vs Sub Registrar, Registration Department and another**. The reference before the Division Bench arose in the following manner:

13. There were instances, when agreements of sale had been registered and in the teeth of existing registered agreements of sale, the land owner presented either a sale deed or a further agreement of sale for registration. A learned Single Judge of this Court had held that the only option available to the land owner was to go before the Civil Court, get the earlier registered agreement of sale cancelled and thereafter, present another document for registration. However, a contrary view was also opined by another learned Single Judge, who stated that an agreement of sale does not create any right and therefore, cannot be a bar for registration of a further document, lawfully presented for registration.



14. In the Division Bench, it was held that Section 104 of the Transfer of Property Act, 1882, very specifically stated that an agreement of sale does not create any charge or interest in the property. The right of an agreement holder is only with respect to the agreement and to specifically enforce the terms of the agreement, since it is only an executory contract and therefore has no right over the property. It was, therefore, held that the registration of agreement of sale will not be a bar for presenting a further document for registration. It was also mentioned that unless a property comes under any of the restricted properties as stated under 22A of the Registration Act, 1908, for instance, the properties, which are Waqf properties, then the Sub Registrar can refuse to register such properties. Placing reliance on that particular judgment, Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner stated that the refusal of the first respondent to register the power of attorney should be interfered with by this Court.

15. This position of law, as stated by Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner has been naturally disputed by Mr.M.Subash Babu, learned Counsel for the second respondent. Learned Counsel pointed out that a reading of the counter would show that the share of the vendor of the petitioner will have to be examined in manner known to law by the Civil Court. The vendor of the petitioner had only an undivided 1/4th share. Therefore, he cannot execute any document, more particularly, a sale deed divesting even the share of the second respondent to the petitioner herein, thereby, directly violating the right, title and interest of the second respondent.

16. It is also stated by Mr.M.Subash Babu, learned Counsel that under Section 72 of the Registration Act, 1908, the Sub Registrar can enter into a discussion on the registrability of a particular document and if at all, the Sub Registrar passes a particular order, the said order is appealable in nature.

17. The dispute now reduces to whether the power of attorney can be categorised as a document, which can be ignored and whether while registering the power of attorney, a decree granting 1/4th undivided share to the vendor of the petitioner can be ignored by the Sub Registrar or whether the Sub Registrar can proceed further to register the power of attorney.

18. It is an admitted fact that the vendor of the Writ Petitioner herein has been declared to be entitled only to an undivided 1/4th share. The Court decree still stands. Passing of final decree alone has been stayed. On the conclusion of the first appeal, the vendor of the petitioner could even be declared to hold the entire lands or his share can be restricted to 1/4th share. But, still, such a declaration or a decree is passed in the first appeal, the rights of the second respondent will necessarily have to be



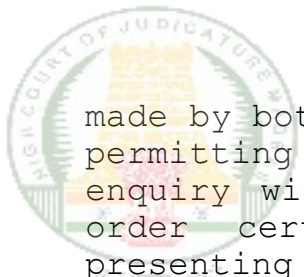
19. In the teeth of the pendency of the suit, when a transaction is entered into by a party to the suit, naturally Section 52 of the Transfer of Property Act, 1882, kicks into play, which provides that if a transaction is done without the leave of the Court, then, the lawfulness of the said transaction can be examined. There is no record to show that the vendor of the petitioner had obtained a leave under Section 52 of the Transfer of Property Act, 1882, before conveying the property to the Writ Petitioner herein. The second respondent, as on date, has lawful share declared and the share of the vendor of the petitioner has been restricted only to 1/4th undivided share.

20. Therefore, the facts of the judgment relied upon by Mr. M. Ajmal Khan, learned Senior Counsel for the petitioner, wherein, it had been held that an agreement of sale, very specifically under Section 104 of the Transfer of Property Act, 1882, does not create a right or title or interest or charge over the property, but, here a sale deed had been executed by the vendor of the petitioner conveying the entire property in the teeth of the claim that he is entitled to only 1/4th undivided share. The right of the second respondent will necessarily have to be protected.

21. To that extent, I hold that the Sub Registrar is within his powers to refuse to register the document and to invite the parties for an enquiry. But, a perusal of the impugned order shows that such an order has not been passed after examining either the Writ Petitioner in person or giving an opportunity to the petitioner to put forth, as to why the document can be registered. I would, therefore, direct the first respondent to issue notice to the Writ Petitioner, issue notice to the second respondent herein, hear their objections and thereafter, pass a detailed order with respect to the refusal or otherwise of the document presented for registration. Let the principles of natural justice be followed. I am conscious that in the course of this order, I have made observations to a large extent about the registration of the document presented and the rights of the parties, but, I am confident that these observations would not weigh on the mind of the Sub Registrar, since these observations are only for the purpose of giving a determination to the issues raised in the present Writ Petition and certainly not on the title or rights of both the parties.

22. Therefore, let the Sub Registrar issue notice to the petitioner and the second respondent, hear their objections and thereafter, pass an order, which can be further tested in appeal in manner known to law by either one of the two parties, which is the proper procedure envisaged under the Registration Act, 1908.

23. Holding as above, the order impugned is set aside, but the Sub Registrar is placed under an obligation to issue notice and re-examine the issues once again on the basis of representations



made by both parties. Though the Writ Petition is allowed, I am not permitting registration of the document, but directing further enquiry with respect to registration of the said document. This order certainly does not restrict the Writ Petitioner from presenting a power of attorney for 1/4th undivided share and if such a document is presented, let the Sub Registrar again take an independent decision with respect to the same after putting both parties on notice.

24. With the above observations, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar (CS)

cmr

To

The Sub Registrar,
Panpoli, Sengottai Taluk,
Tenkasi District.

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-36413[F] dated 29/11/2021)

+1 CC to M/s.SPL GP (SR-36313[F] dated 29/11/2021)

W.P. (MD) No.17602 of 2021
26.11.2021

MGJ(15.12.2021) 6P 4C