



W.P.No.21557 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2022

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.21557 of 2022

V.Sivanadam

S/o. Late Velusamy

... Petitioner

vs.

1. The Inspector General of Registration,
Santhome High Road,
Pattinapakkam, Chennai.

2. The District Registrar,
Tiruppur, Tiruppur District.

3. The Sub Registrar,
Kunnathur, Tiruppur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of order dated 21.06.2022 vide proceedings in RFL/Kunnathur/9/2022 on the file of the 3rd respondent herein and quash the same and directing the 3rd respondent to register and release the settlement deed dated 16.6.2022 to the petitioner within time bound manner.



WEB COPY



W.P.No.21557 of 2022

For Petitioner : Mr.K.Myilsamy
For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus to call for records of the proceedings dated 21.06.2022 in RFL/KUNNATHUR/9/2022 on the file of third respondent herein and quash the same and directing the third respondent to register and release the settlement deed dated 16.06.2022 to the petitioner within time bound manner.

2. It is the case of the petitioner that he acquired the properties comprised in old S.No.21, resurvey No:16/3, 16/4 of an extent of 1.86 acres situated in Kunnathur Village, Uttukuli Taluk, Tiruppur District through a Will dated 11.11.2008 executed by his grandfather namely Subbanna Gounder. Thereafter, he filed a suit in O.S.No.8 of 2010 before the District Munsif Judge, Perundurai seeking declaration and other reliefs and the same was decreed vide order dated 10.12.2010 in favour of the petitioner. When the petitioner presented the aforesaid decree and judgment before the third



W.P.No.21557 of 2022

respondent, the same was refused to be registered on the ground of delay in presenting the said decree. Challenging the same the petitioner has filed a Writ Petition in W.P.No.14902 of 2021, wherein this Court allowed the same vide order dated 29.07.2021, pursuant to which the third respondent registered the said decree dated 10.12.2010. In the meanwhile, the petitioner executed a Settlement Deed and settled the subject property on 16.06.2022 in favour of his sister namely Annakodi, pursuant thereto, when the said document was presented before the third respondent for registration, the same was refused to be registered vide refusal check slip dated 21.06.2022 on the ground that there are chances of creation of double encumbrances in registering the settlement deed and the petitioner has to obtain an order for probate for the Will. Challenging the said refusal check slip dated 21.06.2022 passed by the third respondent, the petitioner has come up with the present Writ Petition.

3. Learned counsel for the petitioner submitted that earlier the petitioner filed a suit in O.S.No.8 of 2010 before the learned District Munsif Judge, Perundurai and obtained interim injunction as against the defendants



W.P.No.21557 of 2022

therein and the said suit was decreed in favour of the petitioner. Since there is no encumbrance against the petitioner, he settled the subject property in favour of one Annakodi. In such circumstances, it is not open to the third respondent to refuse to register the Settlement Deed presented by the petitioner citing the earlier encumbrance which is not against the petitioner in fact it is in favour of the petitioner. Further, in the absence of any interim order in the suit restraining the alienation of the subject property, the Refusal Check Slip impugned in this Writ Petition is liable to be quashed and this Writ Petition may be allowed.

4. Learned Special Government Pleader appearing for the respondents herein submits that the document presented by the petitioner was rejected based on the grounds that there are chances of creation of double encumbrances in registering the settlement deed and further the petitioner has to obtain an order of probate for the Will. Therefore, the Refusal Check Slip issued by the third respondent / the Sub Registrar cannot be found fault with and therefore, the order impugned in this Writ petition needs no interference by this Court and deserves to be dismissed.



W.P.No.21557 of 2022

WEB COPY

5. Heard the learned counsel on the either side and perused the materials available on record.

6. The issue in this case is no longer *res integra* as the similar issue was considered by this Court in the case of ***Vadamugam Vellode NalukaraiNattu Goundergal Sangam Vs Inspector General of Regisration, 2021 (1) CTC 535*** in W.P.No.12585 of 2020 & W.M.P.Nos.15518 & 15521 of 2020. The relevant portion of the order is extracted under as:

“10. The 5th Respondent has approached the Civil Court and he has filed O.S.No.48 of 2019, seeking for the relief of Partition and separate possession of 1/27th share in the Suit properties. It is also seen that the 5th Respondent has filed yet another Suit in O.S.No.58 of 2017 in which she has claimed for the relief of Permanent Injunction restraining the Defendants not to alienate the Suit properties. In both the Suits, there is no Order passed by the Competent Civil Court injuncting from dealing with the Suit properties. What the 5th Respondent was not able to achieve before the Civil Court is now sought to be achieved through the 3rd Respondent by virtue of a Letter given before this Court, dated 21.2.2020. The 3rd Respondent is a Statutory Authority, who has to strictly perform his



W.P.No.21557 of 2022

*function in accordance with law. This Court exercising its jurisdiction under Article 226 of Constitution of India can never prevent a Statutory Authority from performing his function. **Therefore, unless and otherwise a Competent Civil Court passes any Interim Order restraining the alienation of the property, the 3rd Respondent has to entertain the documents and register the same, if it is otherwise in order.** Ultimately, even if the suit is decreed, the transaction will be subject to the Rule of lis pendens. There is no law in force which says that no transaction can take place during the pendency of the Suit. That is exactly why Section 52 of the Transfer of Property Act, provides a solution for transactions that take place during the pendency of the Suit.*

11. In view of the above discussion, the impugned Letter of the 3rd Respondent, dated 21.02.2020 is hereby quashed and the 3rd Respondent is directed to entertain the documents submitted for registration and register the same, if it is otherwise in order. It goes without saying that the necessary Stamp Duty and Registration Fee will be paid at the time of submitting the document for registration.”

12. This Writ Petition is accordingly allowed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.”

7. However, on going through the facts and circumstances of the present case on hand, this Court is of the view that, in the absence of any interim order in the suit restraining the alienation of the subject property, the



W.P.No.21557 of 2022

refusal to register the document citing the earlier encumbrance is not sustainable.

8. Accordingly, this Writ Petition is allowed in the above terms and the third respondent / the Sub Registrar is directed to entertain the document presented by the petitioner on payment of necessary stamp duty and registration charges, if there is no restraint order passed. No Costs.

23.08.2022

RAP

Index : Yes/No
Speaking order : Yes/No



W.P.No.21557 of 2022

To:
WEB COPY

1. The Inspector General of Registration,
Santhome High Road,
Pattinapakkam, Chennai.
2. The District Registrar,
Tiruppur, Tiruppur District.
3. The Sub Registrar,
Kunnathur, Tiruppur District.



WEB COPY



W.P.No.21557 of 2022

M.DHANDAPANI, J.

RAP

W.P.No.21557 of 2022

23.08.2022