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W.P.No.26643 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.26643 of 2022

R.Rajeshwari

.. Petitioner

Versus

The Sub Registrar
Sub Registrar Office
9, Kavignar Bharathidasan Road
Seetammal Colony, MIG Colony
Alwarpet, Chennai – 600 018

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the Respondent relating to the impugned order bearing Refusal Number:RFL/Mylapore/54/2022 dated 22.09.2022 and quash the same and consequently direct the respondent to register the will deed executed by the petitioner dated 22.09.2022.

For Petitioner

:Mr.T.Gowthaman

For Respondents

:Mr.E.Sundaram

Government Advocate

ORDER

This writ petition is filed challenging the impugned order passed in Refusal Number:RFL/Mylapore/54/2022 dated 22.09.2022, passed by the respondent and quash the same and consequently direct the respondent to



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register the will deed executed by the petitioner dated 22.09.2022.

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2. According to the petitioner, he purchased a property bearing Plot No.59 in Dr.Kalam City, measuring about 600 sq.ft, comprised in Survey No. 316/1 (New Survey No. 316/1S) in No.69, Vadamadurai Village, Uthukotai Taluk, Tiruvallur District by virtue of a Sale Deed in Doc.No.5860 of 2014 dated 04.09.2014 on the file of SRO, Arani. Further, his mother namely Mrs.Bommi Ammal purchase a property bearing Door No. 192, Arcot Road, measuring about 1564.5 square feet comprised in New Survey No.85/Part (Old Survey No. 85) in Block 7, Puliur Village, Chennai District vide Sale Deed in Doc.No.9488/1971 dated 28.10.201971. After his mother demise, the petitioner claims 1/7 share along with his sibilings in the above property. While so, he executed a will dated 22.09.2022 in favour of his two daughters namely Mrs.Geetha and Mrs.Hemamalini. When the same was presented before the respondent, the respondent refused to registrar the will on the ground that there is a suit pending before the Civil Court. Challenging the same, this writ petition.

3. The learned counsel for the petitioner submitted that unless there is a restraining order from the competent Civil Court or under Sec. 22A of the Act,



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the documents cannot be refused to register by the Sub-Registrar. Hence, prays to allow this writ petition.

4. Heard both sides and perused the materials placed on record. The facts of the present case are not disputed. Admittedly, the will presented by the petitioner was rejected by the respondent on the sole ground that there is a suit pending before the Civil Court. However, on perusal of the case file would indicate that there is no order from the competent civil court restraining the registration of the documents which, this Court is of the view that in the absence of such restraining order, the Sub-Registrar is bound to register the document. The issue involved herein is no longer *res integra*. The question as to whether in the absence of any restraining order, the Sub-Registrar is bound to register the presented document. This Court in the case of ***Vadamugam Vellode Nalukarai Nattu Goundergal Sangam Vs. The Inspector General of Registration*** and others reported in ***2021 1 CTC 535*** has passed the following directions:

“... 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 OS. No. 58 of 2017 in which she has claimed for the relief of permanent injunction restraining



the defendants 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 21.02.2020. The 3rd respondent is a statutory authority, who has to strictly perform his function in accordance with law. This Court exercising its jurisdiction under Article 226 of the 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. That is exactly why Section 52 of the Transfer of Property Act, provides a solution for transactions that takes 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.”

5. In view of the above decision, the impugned letter of the respondent dated 22.09.2022 is hereby quashed and the 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.



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6. Accordingly, this writ petition stands allowed. No costs.

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Internet: Yes/No

To

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M.DHANDAPANI, J.

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