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W.P. No.26513 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No. 26513 of 2022

D.Nallasivam

... Petitioner

Vs.

The Sub-Registrar
Office of the Sub Registrar,
Perundurai, Erode District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the Refusal Check Slip dated 13.09.2022 in RFL/ Perundurai/ 102/ 2022 issued by the respondent herein and quash the same and consequently direct the respondent to register the Gift deed dated 7.09.2022 executed by Mrs. Samiyathal mother of the petitioner in favour of the petitioner on re-presentation within a time frame to be stipulated by this Honble Court.

For Petitioner : Mr. C.Munusamy

For Respondents : Mr.E.Vijay Anand, AGP

ORDER

The writ petition has been filed seeking quash the impugned refusal check slip dated 13.09.2022 and also direct the respondent to register the



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said gift deed dated 07.09.2022 executed by petitioners mother.

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2. The case of the petitioner is that the petitioner's mother Samiyathal had purchased the property in S.No.660/19 situated at Karumandisellipalayam Village, Perundurai Taluk, Erode District on 15.09.2003 by way of registered sale deed and she is in possession and enjoyment of the property. Thereafter, the petitioner's mother executed a gift deed in favour of the petitioner in respect of the house site measuring an extent of 1560 sq.ft. Along with terraced building of 1300 sq. ft. Situated in S.No.660/19J and the same was registered before the respondent vide document No.7196/2022. Thereafter, the petitioner's mother executed another gift deed in respect of the house site measuring an extent of 320 sq.ft. In the very same survey number and the same was presented for registration before the respondent on 13.09.2022. The respondent has refused to register the gift deed on the ground that the property in question has been attached by the lower Court in O.S.No.427/2006, 429/2006 and 423/2009 on the file of the Sub Court, Erode. Challenging the same, the present writ petition has been filed seeking to quash the same.

3. Learned counsel for the petitioner submitted that there is a suit



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pending before the trial court in respect of S.No.660/1-19. However, the petitioner has presented a gift deed in S.No.660/19J for registration and in respect of the S.No.660/19J, no restrained order is passed. In the absence of any restrained order or attachment order, refusing to entertain the gift deed by the respondent is not sustainable. Therefore, the learned counsel prays to quash the refusal check slip and allow the writ petition.

4. The learned Additional Government Pleader submitted that on perusal of Japthi order passed by the Trial Court, the land in S.No.660/19J is not available. When the suit is pending in respect of the larger extent and the same is attached by the competent Court, the respondent have no power to register the gift deed presented by the petitioner's mother as per Section 22-A of the Registration Act.

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

6. The facts of the case are not in dispute. Admittedly the petitioner's mother executed a gift deed in favour of the petitioner in respect of the house site measuring an extent of 1560 sq.ft. Situated in S.No.660/19J and the



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same was registered before the respondent vide document No.7196/2022.

Thereafter, the petitioner's mother executed another gift deed in respect of the very same survey number measuring an extent of 320 sq.ft. When the same was presented for registration before the respondent on 13.09.2022, the respondent has refused to register the gift deed on the ground that the property in question has been attached by the trial Court.

7. The said attachment order was produced before this Court by the respondent. On perusal of the said attachment order, it reveals that the attachment order is only in respect of S.Nos.660/1-19 and there is no restrained order passed in respect of S.No.660/19J.

8. The entire facts are not disputed by the respondent. Without any restrained order, refusing to register the gift deed which was presented by the petitioner is not sustainable one. Therefore, the impugned refusal check slip, dated 13.09.2022 passed by the respondent is liable to be set aside.

9. Accordingly, this Court sets-aside the impugned order passed by the respondent dated 13.09.2022 and directs the respondent to entertain the gift deed presented by the petitioner and pass appropriate orders on merits and in



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accordance with law within a period of four weeks from the date of receipt of
a copy of this order, if there is no legal impediment.

10. With the above observation, the writ petition is allowed. There shall be no order as to costs.

19.10.2022

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Index : Yes / No

Speaking order : Yes / No

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To

The Sub-Registrar
Office of the Sub Registrar,
Perundurai, Erode District.



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M.DHANDAPANI, J.
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