



W.P.No.29300 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.29300 of 2022

Manibharathi

.. Petitioner

Versus

The Sub-Registrar,
Attur
Salem District
Respondent

..

Prayer:-Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned Checkslip in A.Thi.Mu.No.403/2022 issued by the respondent dated 20.09.2022 and quash the same and consequently direct the respondent to receive and register the sale deed presented in T.P.No.132973259/2022 and return the same.

For Petitioner : Mr.K.R.Samratt

For Respondent : Mr.E.Vijay Anand

Additional Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus to direct the respondent to register the sale deed presented in T.P.No.13297259/2022 and to quash the Refusal Check slip in A.Thi.Mu.No.403/2022.

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2. The case of the petitioner is that the petitioner has entered into a sale agreement with one Mr.A.Srirangan in respect of land measuring an extent of 1.85 acres of comprised in S.No.794/3 in Attur Taluk, Salem District. When the same was presented before the respondent herein vide sale deed in T.P.No.132973259/2022, the present impugned order was passed stating that there is a previous sale agreement in Doc.No.1546/2003 between the vendor namely Mr.A.Srirangan and Mr.S.Karuppannan, hence, respondent cannot register the document unless the above said encumbrance is cleared. Challenging the said refusal order, the petitioner has filed the present writ petition before this Court.

3. Learned counsel for the petitioner submitted that the issue involved in the present case is no more res-integra, which was already decided by the Hon'ble Division Bench of this Court in the case reported in **2020 (6) CTC 697 (N.Ramayee V. Sub-Registrar, Registration Department)**, wherein it has been held that mere registration of an agreement for sale will not be a bar for subsequent transfers. The relevant portion of the above said order is extracted hereunder:-

“46. It is also brought to our notice about the new Circular in



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No.24011/CI/2020, dated 8.10.2020. It is the contention of the learned Additional Advocate General that the Registrar has power to regulate the registration in order to prevent fraud and hence, the Registrar is having powers under the Registration Act to regulate the registration and the right to refuse the document and that such power is available under Section 71 of the Registration Act. Such contention is not acceptable for the simple reason that the Circular bars transfer of property on the ground that when a Lease is already executed in respect of the property, without expiry of the Lease, transfer cannot be permitted or without consent of lessee no registration is permissible. Further, insisting a no objection from Mortgagee before registration is also against the very substantive provision of law. If any property is sold with existing Mortgage, the transferee steps into the shoes of the Mortgagor. He has the right to redeem the property by paying the Mortgage money. Therefore in the name of regulating the registration, any Circular which is in the nature of violating the substantive provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law. If the contention of learned Advocate General that without seeking declaration and cancellation of the Agreement of Sale, subsequent Agreement or transaction cannot be registered, is accepted then such restriction, in fact, infringes the very Constitutional right of the citizen provided under Article 300-A of Constitution.

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48. As already indicated, the purpose of registration is only to give a Public Notice. It is for the buyer or subsequent transferee to make reasonable Enquiry. Doctrine of Caveat emptor will also apply to every transfer. It is for them to verify the title of the property by making reasonable Enquiry. At any event, subsequent transfer will always be subject to the rights already created. Therefore, it cannot be said that merely because Agreement for Sale is registered without obtaining Decree of declaration that such Agreement is void, subsequent transfer is prohibited and cannot be registered. We hold that as discussed



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in our Judgment, Registrar has no right to refuse to register the subsequent document on the basis that Agreement of Sale was already registered in respect of the same property. Accordingly, the Reference is answered. Post the Writ Petition in W.P.No.674 of 2020 before the learned Single Judge for disposal.”

(Emphasis Supplied)

4. The learned Additional Government Pleader appearing for the respondent submitted that the issue had already been settled before this Court in the aforementioned order passed by the Hon'ble Division Bench of this Court.

5. In the present case, on an earlier occasion, the petitioner's vendor namely Mr.A.Srirangan had executed a registered sale agreement in favour of one Mr.S.Karuppannan vide Doc.No.1546 of 2003, however, the said Mr.S.Karuppannan has not come forward to fulfil the obligation, hence, the said agreement did not mature into sale which was also affirmed by the petitioner and the vendor namely Mr.A.Srirangan by way of affidavits stating that the said Mr.S.Karuppannan did not come forward to fulfil his contractual obligations nor issued any notices to that effect. When such being the position, the respondent had refused to register the present sale deed on the ground that there was already a registered sale agreement



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bearing Doc.No.1546/2003 pending. Merely because agreement for sale is registered, the said agreement cannot be held to be void as decree of declaration had not been obtained from the appropriate forum and the same cannot be held to be a bar for further transfer of the property or registration of the said document. It is to be pointed out that the Registrar has no right to refuse the registration of the subsequent document of sale once the decree had not been honoured within the period of limitation citing that a registered agreement of sale is pending. It is borne out by record that the sale agreement has not been registered even after lapse of nineteen years. Moreover, it is an admitted fact that the petitioner had also paid the entire sale consideration to his vendor. Hence, the proceedings dated 20.09.2022 passed by the respondent is bad in law as per the decision (supra) rendered by Division Bench of this Court.

6. Applying the ratio laid down in the aforementioned order of the Division Bench of this Court, the proceedings dated 20.09.2022 passed by the respondent is set aside and the respondent is directed to entertain the document presented by the petitioner, if it is otherwise in order and pass appropriate orders on merits after affording an opportunity of hearing to the



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petitioner, within a period of twelve weeks from the date of receipt of a copy of this order, after receipt of necessary Stamp duty and registration charges.

7. Accordingly, this writ petition is allowed. No costs.

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Speaking Order : Yes/ No

Index : Yes/ No

To

The Sub-Registrar,
Attur
Salem District

M.DHANDAPANI,J.



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