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W.P. No.29711 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.29711 of 2022

V.L.Abdul Samadu

.. Petitioner

Versus

1.The District Registrar
Office of the Registration
Coimbatore

2.The Sub Registrar
Office of the Sub-Registrar
Pollachi

3.Basheer

4.Ahmed Kabeer

5.A.M.Mubarak

6.Abdul Wahab

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue an order or direction or Writ and in particular Writ in the nature of a Writ of Mandamus, to direct the respondents 1 and 2 to cancel the fraudulent registration of the Sale Deed dated 13.02.2012 bearing Document No.3825/2012 on the file of the 2nd respondent by considering the representation dated 27.07.2022.

For Petitioner : Mr.R.Rajarajan

For Respondents : Mr.E.Vijay Anand

Additional Government Pleader



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ORDER

The petitioner has filed this petition seeking to direct the respondents

1 and 2 to cancel the fraudulent registration of the Sale Deed dated 13.02.2012 bearing Document No.3825/2012 on the file of the 2nd respondent by considering the representation dated 27.07.2022.

2. The petitioner claims that the private respondents have borrowed huge sums from the petitioner's father from time and again and deposited title deeds as security vide several documents. While so, subsequent to the death of the petitioner's father, the private respondents fabricating sale agreement and registered a sale deed vide Doc.No.3825/2012 in favour of the third party by suppressing the fact that the same was registered in favour of the petitioner's father as a security by way of depositing title deeds. Aggrieved, the petitioner filed a representation 27.07.2022 before the official respondents seeking to cancel the subsequent sale deed in Doc.No.3825/2012 on the file of the second respondent which is pending without consideration till date. Hence, this petition.

3. The learned counsel for the petitioner submitted that it would



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suffice this Court may issue a direction to the respondents to consider the petitioner's representation dated 27.07.2022 within a reasonable time as fixed by this Court.

4. The Learned Additional Government Pleader 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 No.24011/C1/2020, 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



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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.

.....

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.



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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 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)

5. In the present case, it is alleged that the private respondents had deposited the title deeds in favor of the petitioner's father and subsequent to the death of the petitioner's father, the private respondent had created a sale agreement and registered a sale deed on the file of the second respondent/Sub-Registrar. Considering the facts and circumstances of the case, this Court is of the view that merely because agreement for sale is registered, the said agreement 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 on the basis that Agreement of Sale was already registered



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in respect of the same property. Therefore, this petition lacks merits and is not maintainable in view of the aforementioned order of the Division Bench of this Court.

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

10.11.2022

Index : Yes / No
dhk

To

1.The District Registrar
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M. DHANDAPANI, J.

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