



W.P.No.15097 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.15097 of 2017
and W.M.P.No.6497 of 2020

M.Purushothaman

.. Petitioner

Vs.

The Sub Registrar,
Sub Registrar Office,
Mettupalayam,
Coimbatore District.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondent to receive and register the sale deed dated 24.04.2017 on the representation by ignoring the objection raised in the Check Memo No.4/2017, dated 25.04.2017 and release the original sale deed in view of the law laid down in Satya Pal Anand Vs. State of M.P. 2016 (10) SCC 767.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.K.Tippu Sulthan
Government Advocate

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ORDER

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This writ petition has been filed seeking a direction to the respondent to receive and register the sale deed dated 24.04.2017 on the representation by ignoring the objection raised in the Check Memo No.4/2017, dated 25.04.2017 and release the original sale deed.

2. It is the case of the petitioner that the subject matter properties measuring 2.41 acres comprised in S.F.No.127/1, Sikkarampalayam Village, Mettupalayam Taluk, Coimbatore District was originally owned by one Mr.Ranga Boyee @ Ranga Boyan. Mr.Ranga Boyan died leaving behind him, his two sons namely Kuppa Boyan and Thimma Boyan as his legal heirs. Accordingly, both his sons derived title by succession over an extent of equal half in the total extent of 2.41 Acres.

3. It is the further case of the petitioner that after the death of Thimma Boyan on 10.09.1931, his legal heirs have filed O.S.No.179 of 2008 on the file of the learned District Munsif Court, Mettupalayam against the legal heirs of late Kuppa Boyan for declaration of their title on the basis of an oral partition and for consequential permanent injunction. The said suit



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was decreed exparte on 06.04.2010.

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4. The defendants in O.S.No.179 of 2008 have filed a petition to set aside the exparte decree dated 06.04.2010 and now the suit is pending before the learned District Munsif Court, Mettupalayam.

5. It is the further case of the petitioner that in the meantime, the plaintiffs in O.S.No.179 of 2008 came to know that the above mentioned late Kuppa Boyan, one of the sons of Ranga Boyan, and his wife Azhagammal sold the entire 2.41 acres to one Nanja Boyan under a sale deed dated 05.04.1940. According to the petitioner, neither the said Nanja Boyan nor his vendor Kuppa Boyan and Azhagammal have no right much less any legal right to deal with the entire 2.41 acres. They can claim only half share in 2.41 acres, and not the entire extent owned by late Ranga Boyan.

6. Under these circumstances, the vendors of the petitioner namely P.Santhamani and 31 others being the legal heirs of Thimma Boyan and the above said Kaleeswari and Padma have executed a sale deed dated 24.04.2017 in favour of the petitioner herein for a valid sale consideration, whereupon, the petitioner decided to purchase 1.20 1/2 acres comprised in



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S.F.No.127/1. The said sale deed was presented for registration on 25.04.2017 on payment of necessary stamp duty for the guideline value. The said sale deed dated 24.04.2017 was returned along with a check memo dated 25.04.2017 by the respondent on the ground that only an extent of 62 ½ cents is available for sale in S.F.No.127/1. Hence, aggrieved over the same, the petitioner has filed the present Writ Petition.

7. The respondent have filed counter affidavit, inter alia contending as follows:

(i) According to the respondent, a Sale Deed dated 17.03.2017 evidencing conveyance of 1.20 1/2 acres out of 2.41 acres comprised in Survey No.127/1 of Sikkarampalayam village, Mettupalayam Taluk, Coimbatore District was executed by Tmt.P.Santhamani and 31 others to and in favour of the Petitioner, was presented for registration in the office of the Respondent on 25.04.2017. As per recitals available in Page No.23 of the Sale deed, the entire extent of 2.41 acres comprised in Survey No.127/1 revealed that the said property had already been conveyed by one Kuppa Boyan S/o Late Ranga Boyan along with his wife namely Azhagammal in favour of Nanja Boyan under a Sale deed dated 05.04.1940 registered as Document No.276/1940.



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WEB COPY (ii) Further according to the respondent, as per recitals available in the same page of the sale deed, out of the entire extent of 2.40 acres the purchaser Nanja Boyan conveyed 1/3 extent i.e. 0.80 acres to one Tmt. Mammal W/o. Rama Boyan vide Sale deed dated 19.8.1944 registered as Document No.1276/1944 on the file of the Respondent. As per recitals available in Page No.24 of the sale deed, out of the entire extent of 2.40 acres the aforesaid purchaser Nanja Boyan conveyed 1/3 extent i.e. 0.80 acres to one Tmt. Balammal W/o. Azhagiri Boyan vide Sale deed dated 19.8.1944 registered as Document No.1277/1944 on the file of the Respondent. It is also recited that subsequently as per the mutation made in the Register of Land holdings the names of Thiru Nanja Boyan, Tmt.Mammal and Tmt.Balammal have been entered.

(iii) Further according to the respondent, the Inspector General of Registration, Chennai vide their Circular No.18223/C1/2013-3 dated 08.11.2013, issued detailed instructions to all the registering officers spread over the State to examine the Encumbrance Certificate and to ensure that every instrument of transfer presented for registration has been executed by the person who has got authority/right to execute the same. Based on those



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instructions, since the entire extent of 2.41 acres was already conveyed to one Nanja Boyan under a Sale deed dated 05.04.1940, registered as Document No.276 of 1940, it was concluded that the executants of the sale deed namely Tmt.P.Santhamani and 31 others, have got no right to execute the same.

(iv) Further according to the respondent it is the admitted by the petitioner himself that the suit in O.S.No.179 of 2008 filed before District Munsif Court, Mettupalayam is still pending.

(v) Further according to the respondent for the above reasons the Check Memo No.4/2017 dated 25.4.2017 was issued by Respondent and the Petitioner was directed to clarify and set right the encumbrance and then to present the sale deed for registration.

(vi) It is contended by the respondent that the entire extent of property measuring 2.41 acres comprised in Survey No.127/1 was already conveyed to one Nanja Boyan under a Sale deed dated 5.4.1940 registered as Document No.276 of 1940, who in turn had conveyed 0.80 acres each to one Tmt. Marammai W/o. Rama Boyan vide Sale deed dated 19.8.1944



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registered as Document No.1276/1944 and to one Tmt. Balammal W/o.

Azhagiri Boyan vide Sale deed dated 19.8.1944 registered as Document No.1277/1944. Without annulling the effect of those registered deeds by approaching the competent Civil Court, the action of the petitioner in having executed the current sale deed is not sustainable. Hence as per Rule 162-A, of the Registration Rules, the action of the respondent in refusing to accept the same for registration is very much in order.

(vii) As the petitioner does not have legal right over the said property, any deed executed by him or proposed to be executed by him, in respect of the same, is void or illegal and hence it is submitted that the action of the respondent in refusing to register such document, is very much in order.

(viii) Further according to the respondent, the petitioner has to approach the appropriate Civil Court to set right the rival claims and to seek necessary remedy.

(ix) Further the Petitioner without availing the alternate remedy provided in the form of preferring an appeal to the District Registrar,



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Coimbatore as per Section 72 of the Registration Act, 1908. Hence the respondent seeks dismissal of the writ petition.

8. It is the contention of the learned counsel appearing for the petitioner that the petitioner is entitled to half share in the total extent of 2.41 Acres. Earlier a suit has been filed and a decree has also been obtained and based on the decree a sale agreement has also been registered. Mere encumbrance that a sale agreement has been registered earlier and other co-owners dealt with the property more than their entitlement is not a ground to refuse registration. Once the Court has declared the rights of the parties, the registering authorities cannot decide the title. Hence the learned counsel appearing for the petitioner seeks the above direction.

9. The learned Government Advocate appearing for the respondent would submit that as already the other co-owners have executed registered document and some agreement of sale has also been registered, therefore, the registering authority has rightly issued the check slip.

10. Heard the learned counsel on either side and also perused the entire records carefully.



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WEB COPY 11. Admittedly the petitioner's rights have been declared by the learned District Munsif Court, Mettupalayam in the civil suit in O.S.No.179 of 2008 and a decree has also been passed and based on that a sale agreement has also been registered. Thereafter, the petitioner has presented a sale deed on 25.04.2017 for registration, however the respondent without registering the document returned the same along with a check memo dated 25.04.2017 on the ground that only an extent of 62 1/2 cents is available for sale in S.F.No.127/1 and already an agreement in respect of the property has been registered and shown in the encumbrance and therefore registration is not permissible.

12. In this regard, it is relevant to note that a Division Bench of this Court in ***N.Ramayee Vs. Sub Registrar, Registration Department*** reported in ***(2020) 6 CTC 697*** has held in paragraphs 41 to 49 as follows:

"41. The contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest or charge on such property. The agreement of sale is merely a document creating right to obtain a



document of sale on fulfilment of terms and conditions specified therein and it is only capable of enforcement in the event of breach of contract by the other side. Even to enforce such agreement for specific performance, the agreement holder has to establish not only the contract but other grounds viz., ready and willingness on his part to get a decree of specific performance provided the suit is filed within time.

42. In *Narandas Karsondas vs. S.K.Kamtam & another* [AIR 1977 SC 774] the Honourable Supreme Court also considered the nature of the right created on the immoveable property by a contract for sale. It has been stated that contract of sale in view of section 24 of T.P.Act does not of itself create any interest in or charge on the property. The personal obligation created by a contract of sale (as recognised in Section 3 of the Specific Relief Act and section 91 of the Trust Act is described in Section 40 of the T.P. Act) as an obligation arising out of contract. An annexure to the ownership of the property, but not amounting to interest or easement therein.

43. Section 19(b) of Specific Relief Act also



protects the subsequent transferee for value and for consideration in good faith without notice of the original contract. Even if a person has no title to the property has entered into a contract for sale, the transferee can seek for specific performance under section 13 of the Specific Relief Act.

44. From a combined reading of various provisions of the Transfer of Property Act as referred above, we are of the view that there is no bar for creating subsequent transfer of the immovable property. Effect of the subsequent transfer is always subject to the earlier transfer created by the transferor of the immovable property. Therefore, it cannot be said that since the agreement for sale is registered the owner viz., the Vendor has no right to execute any document. In Venkatamma's case [W.P.No.33601 of 2019] in fact settlement deed has been presented for registration by the Vendor after three years of the so called contract. Merely on the basis of the agreement for sale, the registrar refused to register the document which is against the very substantive law of the country. If such approach is accepted a situation may arise in every loan



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transaction if some contract is registered, merely because it shown in the encumbrance as a registered agreement, the owners of the property would be prohibited from dealing with the property as long as the encumbrance finds place in the encumbrance certificate. Such situation in fact would lead to deprive the right of the owner of the property to deal with the property which is a constitutional right.

45. In view of the above, we are of the view that the view taken by the learned single judge in W.P.No.33601 of 2019 [Venkattamma vs. The Sub-Registrar and another], does not lay down correct position of law and the same is hereby overruled. Another single Judge in W.P.(MD) No.24429 of 2018 [Raju vs. The District Registrar, Trichy and another] had directed to register the subsequent agreement, however without any reasons. In the above judgment also the learned single Judge has not gone into the provisions of law except issuing a mere direction. The said judgement is also not based on any discussion on substantive law or proceedings and therefore does not lay down any law.



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46. Accordingly, we answer the reference as follows:

If an agreement for sale is registered in respect of immovable property, the same will not be a bar for the owner of the property to effect subsequent transfers in respect of the same property. The Registrar has no right to refuse to register the document, except the documents relating to immovable properties mentioned in Section 22-A of the Tamil Nadu Act and as contemplated under Rule 162 of the Registration Rules.

47. It is also brought to our notice about the new circular in No. 24011/C1/2020 dated 08.10.2020. 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



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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 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 the Constitution.

48. We are of the view that except as provided in the Registration Act and any other statute, the Registrar has no power to refuse to



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register a document. Though the object of the Act is to prevent fraud, such occasion arises only where some private properties are notified under the Tamil Nadu Private Forest Act. In such case, sale of such property without permission of the Collector of the District is void. Only when such notification is available in respect of any property, the Registrar can verify whether the sanction of the Collector is obtained or not. Similarly, whenever properties have been declared as forest land or elephant corridor, etc., and the notification is available with the Registrar, based on the above notification he can exercise power. Except the above, the Registrar has no power to refuse to register the document.

49. 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 in our judgement, Registrar has no right to refuse to register the subsequent document on the basis that agreement of sale was already registered in respect of 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."

13. In the light of the above judgment, the Registrar has no right to refuse to register the subsequent document on the basis that agreement of sale was already registered in respect of same property.

14. It is also relevant to note that Section 48 of the Transfer of Property Act deals with priority of rights created by transfer and the same is extracted hereunder:

"Section 48. Priority of rights created by transfer - Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together,



each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created."

15. Thus, Section 48 of the Transfer of Property Act deals with the priority of rights covered by the transfer of any subsequent transfer in respect of the same property and such rights will be subject to the rights previously created. Therefore, the registering authorities cannot assume the role of a Civil Court to decide the rights of the parties when document was presented for registration and the registering authority is duty bound to register the document.

16. Such view of the matter, this writ petition is allowed and the respondent is directed to register the document presented by the petitioner within a period of two months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. No costs.

16.11.2022

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To



W.P.No.15097 of 2017

The Sub Registrar,
Sub Registrar Office,
Mettupalayam,
Coimbatore District.



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N.SATHISH KUMAR, J.

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