



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2022

CORAM:

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND**

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**C.M.P. (MD) No.474 of 2022
and W.A. (MD) SR. No.66295 of 2021**

S.A.Kannan ... Petitioner/Appellant
Vs.

1.K.Karthikeyan

2.The Sub-Registrar,
Alangulam,
Tenkasi District.

... Respondents/Respondents

Prayer in C.M.P. (MD) No.474 of 2022: Civil Miscellaneous Petition filed under Section 151 of the Code of Civil Procedure, 1908, praying to grant leave to file writ appeal against the order passed in W.P(MD)No.19054 of 2021 on 27.10.2021.

Prayer in W.A. (MD) SR.No.66295 of 2021: Writ Appeal filed under Clause 15 of Letter Patent Appeal, praying to set aside the order dated 27.10.2021 passed in W.P.(MD) No.19054 of 2021 and allow the Writ Appeal.

For Petitioner in C.M.P. : Mr.H.Arumugam
and Appellant in W.A. SR.

COMMON ORDER

(Order of the Court was made by PUSHPA SATHYANARAYANA,J.)

This Civil Miscellaneous Petition is filed seeking leave to file a writ appeal against the order dated 27.10.2021 passed in W.P(MD)No.19054 of 2021.

2. The writ petition was directed against the check slip issued by the Sub-Registrar, Alangulam, Tenkasi District, by the owner of the property, who executed a settlement deed in favour of his son. The petitioner and his wife are the owners of the property and they had given the original documents in the custody of one S.A.Kannan, the petitioner herein, as a security for the loan availed by them vide Memorandum of Deposit of Title Deeds dated 24.03.2017 and 26.03.2018. Admittedly the original documents are in the custody of the petitioner herein, who is the mortgagee. While so, when the



owners executed a settlement deed in favour of their son and presented for registration, the refusal check slip dated 11.10.2022 was issued.

3. The learned single Judge, who heard the writ petition had set aside the check slip and remitted the matter for reconsideration by respondent Sub-Registrar on following two grounds:

(i) Since there was no separate loan agreement but the documents are with the mortgagee, the mortgagee has to be put on notice.

(ii) Whether the original title deeds are with the mortgagee?

4. Since the Writ Court had directed the Sub-Registrar to issue notice to the mortgagee, who is the petitioner herein for the above said two purposes for conducting an enquiry, the petitioner herein need not challenge the said order as his rights are sufficiently protected. The petitioner herein had preferred the appeal on the ground that the Sub-Registrar ought to have insisted for the production of 'No Objection Certificate' from the mortgagee. The only apprehension of the petitioner is that when the original title deeds are with him, further encumbrances should not be allowed to happen. Nevertheless the order of the writ Court only has mandated notice to the petitioner, who is the mortgagee, directed the Sub-Registrar to conduct an enquiry and pass appropriate orders. Therefore, the petitioner cannot be termed as a person aggrieved claiming that his right or interest has been adversely affected or jeopardized. Therefore, we are not inclined to grant leave to file an appeal.

5. Accordingly, C.M.P.(MD) No.474 of 2022 is dismissed. Consequently, W.A.(MD) SR.No.66295 of 2021 is rejected. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

pm

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To:

The Sub-Registrar,
Alangulam,
Tenkasi District.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-4352[F] dated 04/02/2022)

C.M.P. (MD) No.474 of 2022
and W.A. (MD) SR. No.66295 of 2021
03.02.2022

KB(11.02.2022) 3P 3C