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W.P.(MD)NO.10886 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.10886 of 2022

1. Sethu

2. Amirtham

3. Chellapandian

... Petitioners

Vs.

The Sub-Registrar,
Singampunari Taluk,
Sivagangai District.

... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to accept and register the settlement deed presented by the petitioners 1 and 2 in favour of the petitioner in respect of the properties comprised in S.No.188/6 to an extent of 0.06.0 hectares, S.No.188/8 to an extent of 0.12.0 hectares, S.No.175/10 to an extent of 0.175 hectares, S.Nos. 174/13, 174/14 to an extent of 0.10.0 hectares, 0.09.5 hectares situated at A.Kalapur, Singampunari Taluk, Karaikudi Registration District on the basis of the petitioner's representation dated 11.04.2022.



For Petitioner : Mr.R.G.Shankar Ganesh

For Respondents : Mr.K.S.Selvaganesan,
Additional Government Pleader.

* * *

ORDER

Heard both sides.

2. The case of the petitioners is as follows:-

The first petitioner is the husband and the second petitioner is the wife. The third petitioner is their son. The properties comprised in survey Nos.188/6, 188/8 and 175/10 measuring total extent of 0/175 hectares situated at A.Kalapur, Singampunari Taluk belongs to the first petitioner. The other items belong to the second petitioner. The first petitioner and the second petitioner executed a registered mortgage deed on 18.12.2008 in favour of one Rawoof Nisthar for a sum of Rs.2,50,000/-. The mortgagee is said to have passed away in the year 2013. The petitioners are unaware of the whereabouts of the legal heirs of the mortgagee. Petitioners 1 and 2 want to settle all the petition-mentioned properties in favour of their son / third petitioner herein. The



registering authority has made it clear that unless the previous encumbrance is cleared, the document will not be registered. The third petitioner submitted representation dated 11.04.2022. Since it did not elicit any response, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The learned Additional Government Pleader appearing for the respondent submitted that the stand of the respondent is justified. He drew my attention to the Circular No.24011/C1/2020 dated 08.10.2020 issued by the Inspector General of Registration in this regard. According to the learned Additional Government Pleader, the petitioners cannot present the deed of settlement without cancelling the earlier deed of mortgage. He pressed for dismissal of the writ petition.



5. It appears from the submission of the learned counsel appearing for the petitioners that the mortgagee is no more. Neither his death certificate nor the legal heir certificate have been enclosed in the typed set of papers. Assuming that the mortgagee is no more, the petitioners can very well approach the legal heirs of the deceased mortgagee and get the encumbrance cleared. But the petitioners plead helplessness. They want to clear the encumbrance. Since they are unaware of the whereabouts of the legal heirs of the mortgagee, they do not know as to what to do.

6. The moot question before this Court is whether the mortgage has to be cleared. Rather the question is whether the registering authority can decline to register the settlement deed in the circumstances set out supra.

7. It is true that the circular dated 08.10.2020 issued by the Inspector General of Registration has come in the way of the respondent from entertaining the document presented by the petitioners herein. However, there is no such restriction found in the provisions of the Transfer of Property



Act 1882. The statutory scheme set out thereunder is quite clear. The doctrine of hierarchy of laws envisages that the provisions of the statute will prevail over any executive instruction that may be issued by the authority. In this view of the matter, this Court has to hold that the respondent cannot refuse registration by citing the prior encumbrance.

8. The petitioners are permitted to re-present the settlement deed. The respondent shall register the same subject to fulfilment of the usual formalities such as payment of stamp duty, registration charges etc. This writ petition stands allowed. No costs.

14.06.2022

Index : Yes / No

Internet : Yes/ No

PMU/RMI

To:

The Sub-Registrar,
Singampunari Taluk,
Sivagangai District.



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6

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G.R.SWAMINATHAN,J.

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