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W.P.No.1806 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1806 of 2023

R.Prakasam alias R.Jayaprakash

... Petitioner

Vs.

The Joint sub Registrar,
Raja Street, Town Hall,
Coimbatore - 641001.

... Respondent

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned refusal check slip No. RFL/Joint II SRO Coimbatore /175/2022 dated 11.11.2022 issued by the respondent and quash the same as also to consequently direct the Respondent to remove the registration refusal entries in the relevant index and Books of the Joint II Sub Registrar Office, Coimbatore and register the partition deed dated 11.11.2022 executed between the petitioner and his co-owners in respect of the land comprised in new S.F.No.250 of Komarapalayam Village in Perur Taluk of Coimbatore District.

For Petitioner : Mr.N.Somasundaar

For Respondent : Mr.E.Sundaram, Govt. Advocate



W.P.No.1806 of 2023

WEB COPY

ORDER

The refusal check slip No. RFL/Joint II SRO Coimbatore /175/2022 dated 11.11.2022, issued by the respondent is sought to be quashed in the present writ petition.

2.The petitioner states that the agricultural lands measuring 45 Cents out of total Nanjai acre 2.20 in Komarapalayam Village, in Coimbatore Taluk and District together with agricultural shed bearing Door Nos.300 & 301, Electric Service Connection No.32 together with right over common card track and easementary rights were acquired by him and his maternal aunts namely Ranganayaki & Renukadevi jointly vide Annexure – 2 Sale Deed dated 17.08.1993, Registered at the office of the Respondent as Doc.No.821/1994.

3.The petitioner states that he is the co-owner / co-sharer with Ranganayaki & Renukadevi. They have decided to have an amicable partition of the joint property to facilitate separate possession and enjoyment of their respective share and portion of the lands. Accordingly, the petitioner, along with other co-owners, divided the lands into separate



W.P.No.1806 of 2023

portions and presented a deed of partition for registration. The Registering

Authority returned the document along with the impugned refusal check

slip on the ground that the presentation of document is in violation of

Section 22(A) of the Registration Act and more specifically, Sub-section 2

which contemplates that *"instrument relating to the transfer of ownership*

of lands converted as house sites without the permission for development

of such land from planning authority concerned shall be refused."

4. Regarding the interpretation for the term *"transfer of ownership of land converted as house sites"* this Court has considered the principles in WP.No.12674 of 2023 dated 05.07.2023 and the relevant paragraphs are extracted hereunder:

“ 7. Section 22-A of the Registration Act was inserted by the Tamil Nadu Act 28 of 2012 with effect from 20.10.2016. It deals with Refusal to register certain documents. Accordingly, the Registering Officer shall refuse to register any of the documents enumerated under Section 22-A of the Act. Sub Section (2) to Section 22-A stipulates that *“Instrument relating to the transfer of ownership of lands converted as house sites without the permission for development of such lands from planning*



W.P.No.1806 of 2023

authority concerned”.

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8. In view of the above condition approval from the planning authority is mandatory for the purpose of conversion of house sites on transfer of ownership.

...

11. Whether the partition deed is an instrument relating to transfer of ownership of the lands are also to be considered by this Court.

12. Sub Section (2) to Section 22-A unambiguously stipulates that the instrument relating to the transfer of ownership of lands. In this context, a joint ownership cannot be compared with the individual ownership. In a joint ownership persons are jointly entitled to enjoy property and they hold only undivided share. Any of the co-owner in a joint property is not entitled to occupy a particular portion of the land, since there was no individual transfer of ownership in respect of common property. Thus, a joint ownership/co-ownership cannot be compared with the individual ownership in respect of the properties, which all are specified in any document.

13. It is not in dispute that the seven individuals have purchased the property commonly and thereafter they have partitioned the property and divided the same for



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W.P.No.1806 of 2023

individual occupation. When the parties have intended to have an individual right over a particular portion of the land, it is to be construed as transfer of ownership from joint ownership to individual ownership.

14. In a joint ownership the right of the parties cannot be claimed individually. They cannot independently sell a particular portion of the property. No doubt, one joint owner can sell his common share, but he cannot sell a particular portion of the property. Therefore, the joint ownership/co-ownership and the rights conferred for a joint owner is in-comparable to that of an ownership of an individual in a particular property. Two components are distinct and different and the rights are also distinguishable. Therefore, registering a property as joint owners cannot be a ground to claim that partitioning the property would not fall under Sub Section (2). In fact the Sub Section (2) is intended to ensure every transfer of ownership of the lands.

...

20. The “house sites” indicated in Sub Section cannot be construed as if building plan permission is essential at the time of registration. Once the property has been divided into plots and pathways are created, then purposive interpretation should be given that there is a likelihood of converting the same as housing plots even in



W.P.No.1806 of 2023

future and therefore in all such circumstance the transfer of ownership of lands is to be construed as if within the definition of Sub Section (2) to Section 22-A of the Registration Act.”

5. In view of the above position of law and the interpretation of Sub-section 2 to section 22 (A) of the Act, the petitioner is at liberty to secure proper planning permission from the competent authority and thereafter, present the document for registration in the manner known to law. In the event of production of proper planning approval, the Sub Registrar shall proceed with the registration if the document is otherwise in accordance with the proceedings.

6. Accordingly, the writ petition stands **disposed of**. However, there shall be no order as to costs.

(sha)
Index : Yes
Speaking Order
Neutral Citation : Yes

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W.P.No.1806 of 2023

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The Joint sub Registrar,
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W.P.No.1806 of 2023

S.M.SUBRAMANIAM. J.,

(sha)

W.P.No.1806 of 2023

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