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W.P.No.2498 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

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THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No. 2498 of 2023

Ananthi

.. Petitioner

Versus

1.The District Registrar
Vellore District

2.The Sub-Registrar
Pallikonda, Vellore District

.. Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the 2nd respondent in Ref.No.RFL/Pallikonda/7/2023 dated 19.01.2023 and quash the same and consequently direct the 2nd respondent to register the sale deed dated 19.01.2023 presented by the petitioner in accordance with the provisions of the Registration Act, 1908.

For Petitioner : Mr.T.Arockia Dass

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This Petition has been filed challenging the records pertaining to the proceedings of the 2nd respondent in Ref.No.RFL/Pallikonda/7/2023 dated



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19.01.2023 and quash the same and consequently direct the 2nd respondent to register the sale deed dated 19.01.2023 presented by the petitioner in accordance with the provisions of the Registration Act, 1908.

2. The respondent has refused to register the document only on the ground that original partition deed has not been produced by the petitioner. The said Order has been passed mainly on the strength of the amendments made in Rule 55A of the Registration Rules under the Registration Act, 1908. The said Rules reads as follows:

“55A. (i) The registering officer before whom a document relating to immovable property is presented for registration, shall not register the same, unless the presentant produces the previous original deed by which the executant acquired right over the subject property and an Encumbrance Certificate pertaining to the property obtained within ten days from the date of presentation:

Provided that in case an encumbrance as to mortgage, orders on attachment of property, sale agreement or lease agreement exists over the property, the registering officer shall not register such document if the time limit for filing of suit is not lapsed or No Objection Certificate is not granted by the appropriate authority or raising of the attachment is not done, as the case may be:

Provided further that in case the previous original deed is not available as the property being an ancestral one, the registering officer shall not register such document, unless the presentant



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produce any revenue record evidencing the executant's right over the subject property such as patta copy issued by Revenue Department or tax receipt:

Provided also that if the previous original deed is lost, the registering officer shall register such document only on production of non-traceable Certificate issued by the Police department alongwith the advertisement in the local Newspaper as to the notice of loss of the previous original deed”

On perusal of the above Rules, it would make it clear that unless the original is produced, the registration cannot be effected by the concerned officer.

3. Mr.Yogesh Kannadasan, learned Special Government Pleader takes notice for the respondents.

4. The first proviso of the Rule, in the opinion of this Court runs counter to the substantive provision of The Transfer of Property Act, 1882 (hereinafter referred as 'Act').

4a). Section 48 of the Act deals with the Priority of right created by the transfers.

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



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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.

4b). Section 43 of the Act deals with the transfer of unauthorised person who subsequently acquires interest in property transferred which is called doctrine of feeding the grant by Estoppel.

43. Transfer by unauthorized person who subsequently acquires interest in property transferred

Where a person [fraudulently or] erroneously represents that he is authorized to transfer certain immovable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

4c). Section 56 of the Act deals with the marshalling by subsequent purchaser.

56. Marshalling by subsequent purchaser.- *If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties.*

4d). Section 57 of the Act deals with the permitting the sale with encumbrance in a Court action.



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57. Provision by Court for encumbrances and sale freed therefrom

(a) Where immoveable property subject to any encumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,-

(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property -- of such amount as, when invested in securities of the central Government, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property -- of the amount sufficient to meet the encumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a large additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the encumbrance, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the encumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or



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transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the State Government may, from time to time, by notification in the Official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

5. Therefore, insisting No Objection Certificate from the appropriate authority / mortgagor, this Court is of the view that encumbrance as to mortgage, orders on attachment of property, sale agreement or lease agreement, it is only the buyers risk and insisting a No objection certificate from the Mortgagor/appropriate authority rules run counter to the substantive provisions of law in the Transfer of Property Act, 1882.

6. Second proviso deals with the ancestral property. It is stated that only when the original document is not available, as the property being an ancestral one, the revenue records evidencing the executant's right be



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produced. While framing such Rule, the Government has not taken into consideration of the fact that the partition deeds are entered among the co-owners. Normally, original partition deed will be retained by anyone of the family member. In fact, there may be a situation, wherein, the person who will be in possession of the original partition deed, may not be willing to produce the documents. If such original is not produced as required under this Rule, the other members of the family cannot deal with the property. This aspect has not been taken into consideration, while framing the Rules.

7. Therefore, this Court is of the view that though it is stated that a batch of writ petitions are pending before the learned Single Judge. In view of the limited purpose of this case and taking note of the rule position as it totally prevents the owner, co-owner or persons dealing with the properties, this Court is of the view that the Rules insisting original partition deed is not in accordance with law.

8. Such view of the matter, the registering authority may accept the certified copy of the Registered partition deed presented by other members



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and need not insist for producing the original always.

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9. Accordingly, this writ petition stands allowed, the impugned order is set aside and the petitioner is directed to present the certified copy for registration by paying the requisite stamp duty and registration charges and the second respondent is directed to entertain the document presented by the petitioner. No costs.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation : Yes/No

To

1.The District Registrar
Vellore District

2.The Sub-Registrar
Pallikonda, Vellore District



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N.SATHISH KUMAR, J.

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