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WP.No.3443 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

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THE HONOURABLE MR. JUSTICE N.SATHISH KUIMAR

WP.No.3443 of 2023

Sellammal

.. Petitioner

Versus

The Sub-Registrar
Suramangalam Sub Registrar Office
Salem District.

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to quash the impugned refusal check slip dated 15.09.2022 in RFL/Suramangalam/223/2022 and consequently direct the respondent to register the sale deed dated 15.09.2022 without insisting for production of the Original Agreement for sale and seperate patta.

For Petitioner : Mr.R.Prabakar
For Respondent : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This writ petition is filed seeking to quash the impugned Refusal Check Slip dated 15.09.2022 made in RFL/Suramangalam/223/2022 and consequently direct the respondent to register the Sale Deed dated 15.09.2022 without insisting for production of the Original Agreement for sale and seperate patta.

2. The main contention of the learned counsel for the petitioner is that



WP.No.3443 of 2023

the petitioner has presented the Sale Deed of undivided share which has been determined in Civil Suit in O.S.No.58 of 1978. When the document was presented before the respondent, the same has been rejected on the ground that the sale agreement is of the year 2004 registered on the file. Challenging the same, this writ petition has been filed.

3. The Impugned Order refusing the registration of the document on the ground that existence of entries relating to the sale agreement executed in the year 2004 runs contra to the Judgment of the Division Bench of this Court. This Court in the case reported in **2020 (6) CTC 697 (N.Ramayee V. Sub-Registrar, Registration Department)**, wherein it has been held that mere registration of an agreement for sale will not be a bar for subsequent transfers.

The relevant portion of the above said order is extracted hereunder:-

“46. It is also brought to our notice about the new Circular in No.24011/CI/2020, dated 8.10.2020. 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 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



WEB COPY

transferee steps into the shoes of the 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 Constitution.

.....

48. 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 Judgment, Registrar has no right to refuse to register the subsequent document on the basis that Agreement of Sale was already registered in respect of the 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.”

(Emphasis Supplied)

4. When this Court has elaborately dealt and held mere registration of sale agreement will not be a bar for registration of the document, as the sale agreement which has not created any charge or interest over the property. That apart, the petitioner is only transferring his undivided interest which is also permissible under Section 44 of the Transfer of Property Act.

5. Such being the position, the impugned order is hereby set aside and



WP.No.3443 of 2023

this Court directs the respondent/Sub-Registrar to entertain the document presented by the petitioner, if it is otherwise in order after remitting the requisite statutory fees.

6. Accordingly, this writ petition stands allowed. No costs.

08.02.2023

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Index:Yes/No

Internet: Yes/No

To

The Sub-Registrar
Suramangalam Sub Registrar Office
Salem District.

N.SATHISH KUMAR, J.



WEB COPY



WP.No.3443 of 2023

dhk

W.P.No.3443 of 2023

08.02.2023