



W.P.No.9077 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.9077 of 2023

S. Gandhi @ Nickel Kumar

... Petitioner

Vs.

1.The District Registrar,
Registration Department,
Office of District Registrar, Saram,
Government of Puducherry.

2.The Sub Registrar,
Sub Registrar Office,
Villianur, Puducherry.

3.The Income Tax Officer,
Ward 1 (1),
Villupuram,
Villupuram District.

4.B. Jaykumar
Respondents

...

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the respondents 1 and 2 from making any registration pending disposal of petitioner's representation dated 06.03.2023.



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For Petitioner : Mr.K.S. Ilangovan

For R1 to R3 : Mr.P. Sathish,
Additional Government Pleader

ORDER

The petitioner herein, had entered into a sale agreement with one B. Jayakumar (the fourth respondent herein), proposing to purchase the property comprised in R.S.No.155/2 of Villianur Revenue Village, within the Puducherry Registration District, Villianur Sub Registration District, under Patta No.28 (hereinafter referred to as the subject property). Alleging that the subject property is sought to be alienated by the third parties, he had made a representation dated 06.03.2023 to the respondents 1 and 2, to refrain from registering any document thereof. The present Writ Petition is for a direction to the official respondents to consider his representation.

2. Admittedly, the petitioner herein is not an owner of the subject property but is only a sale agreement holder. An agreement to sell does



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not create any interest on the proposed vendee over the suit property.

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Section 54 of the Transfer of Property Act, 1882, provides that the title in an immoveable property, valued at more than Rs.100/-, can be conveyed only by executing a registered Deed of Conveyance and that a Contract for Sale of an immoveable property will not by itself create any interest or charge on such property.

3. Section 54 of the Transfer of Property Act, 1882, reads as follows:-

““Sale” defined:- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made- Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes



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place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.-A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

4. The Hon'ble Apex Court in a decision in '**Suraj Lamp and Industries Private Ltd., through Director Vs. State of Haryana and another**' reported in '**2012 (1) SCC 656**', had dealt with the scope of an agreement of sale and while relying upon another decision in '**Narandas Karsondas Vs. S.A. Kamtam & Another**' reported in '**1977 (3) SCC 247**', had held that an agreement to sell will not qualify to the requirements of Sections 54 & 55 of the Transfer of Property Act, 1882 and as such, it will not confer any title nor transfer any interest in the immovable property. The relevant portion of the order reads as follows:-

“16.Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property.



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This Court in Narandas Karsondas v. S.A. Kamtam and Anr. (1977) 3 SCC 247, observed:

32.A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See Rambaran Prosad v. Ram Mohit Hazra) [1967]1 SCR 293. The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

33.In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in section 5 of Transfer of Property Act is used in the wider sense of conveying ownership.

37. ...that only on execution of conveyance ownership passes from one party to another...."

19.Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of TP Act). According to TP Act, an



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agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.”

5. Thus, when Sections 54 & 55 of the Transfer of Property Act, 1882, does not confer any title or transfer any interest on the immoveable property, the claim of the petitioner, being a sale agreement holder, cannot be sustained.

6. Accordingly the Writ Petition stands dismissed. No costs.

31.03.2023

Speaking/Non-speaking Order

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To

- 1.The District Registrar,
Registration Department,
Office of District Registrar, Saram,
Government of Puducherry.
- 2.The Sub Registrar,
Sub Registrar Office,
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- 3.The Income Tax Officer,
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M.S.RAMESH, J.

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