



WEB COPY

WP No.11506 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-07-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.11506 of 2023

And

WMP No.11396 of 2023

Vasanthi

... Petitioner

Vs.

1.The District Registrar,
O/o.District Registrar,
Cheyyar,
Cheyyar Taluk,
Thiruvannamalai District.

2.The Sub Registrar,
O/o.Sub Registrar Office,
Dusi Village,
Cheyyar Taluk,
Thiruvannamalai District.

3.Srinivasan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the connected



records relating to the order in Na.Ka.No.07/2022 dated 13.01.2022 passed by the second respondent and quash the same and consequently direct the second respondent to entertain the petitioner's return Sale Deed document No.S01LANDVV202102259320820 for registration and consider the petitioner's representation dated 09.11.2022 pending on the file of the first respondent.

For Petitioner : Mr.G.Pavendhan

For Respondents-1 and 2 : Mr.C.Jayaprakash,
Government Advocate.

For Respondent-3 : No Appearance

ORDER

The order of rejection dated 13.01.2022 passed by the second respondent rejecting the Deed of Sale presented by the petitioner for registration, is under challenge in the present writ petition.

2. The petitioner states that she is the absolute owner of the property, more fully described in the present writ petition. However, there is a dispute exist between the petitioner and the third respondent, who is none other than the husband of the writ petitioner and a civil dispute in OS No.17 of 2021 is pending.



3. Since the civil suit between the parties are pending, the Sub Registrar refused to register the Sale Deed presented by the petitioner for registration.

4. The learned counsel for the petitioner states that there is no interim order in the civil suit. Thus the Sub Registrar ought to have registered the documents.

5. The learned Government Advocate appearing on behalf of the respondents 1 and 2 raised an objection by stating that the Sub Registrar is also a party to the suit proceedings and therefore, the impugned order is in consonance with the provisions of the Act.

6. Pertinently, there is no interim order of prohibition for registering any document in respect of the subject property involved in the suit proceedings.

7. The mere fact that the Sub Registrar is a party in the suit



would not preclude the persons from registering the document, if such documents are otherwise presented in accordance with the provisions of the Registration Act.

8. The Registering Authority cannot raise an objection with reference to the civil suit pending in the absence of any interim order in force from the Competent Court of Law.

9. The legal position in this regard elaborately considered by the Division Bench of this Court in the case of **N.Ramayee vs. Sub Registrar [2020 (6) CTC 697]**, wherein the Hon'ble Division Bench of this Court in paragraphs 37 to 40 observed as under:-

“37. It is also pertinent to note that even if transfer is made during a pending suit, such transfer is not void but is subject to the result of the suit. Section 53 of the Transfer of Property Act, deals with fraudulent transfer. Even such fraudulent transfer is made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Even in such cases the rights of



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transferee in good faith and for consideration is protected.

38. Section 56 of the Transfer of Property Act deals with marshalling by subsequent purchaser. The above provision also makes it clear that when 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. The above provision also makes it clear that though there were mortgages already created there is no bar for subsequent transfer of the property. But subsequent transfer is subject to the mortgage earlier created.

39. Section 57 of the Transfer of Property Act deals with the Provision by Court for encumbrances and sale freed therefrom. The



Section also makes it clear that even the properties already encumbered can be brought under court sale and the encumbrance can be freed after issuance of notice to the encumberer.

40. It is also relevant to note that even a mortgage is a transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. Therefore, it cannot be said that once the encumbrance is made by creating a mortgage, the mortgagor is totally prohibited from effecting any further transfer. In fact if any such transfer is made, it is always subject to the mortgage alone. If the analogy is drawn from the judgment of the single judge in W.P. No. 33601 of 2019 [Venkattamma vs. The Sub-Registrar] that agreement once registered there cannot be any subsequent settlement deed is accepted, such situation even may lead to the contention that even where a simple mortgage is created, the mortgagor cannot transfer the property for any other purpose even for a lease,



even though lease is just transfer of right to enjoy the property. The judgment of the learned single Judge in W.P. No. 33601 of 2019 [Venkattamma vs. The Sub-Registrar] holding that unless there is declaration declaring the agreement for sale is null and void is obtained from civil court no further transfer could be registered, which is, in our view, not according to law. It is also to be noted that in the above case only agreement for sale was registered. It is relevant to extract Section 54 of the Transfer of Property Act

54. “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.—3 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 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 immoveable 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.”

10. That apart, in the case of **Vadamugam Vellode Nalukarai Nattu Goundergal Sangam vs. Inspector General of Registration and Others [2021 (1) CTC 535]**, wherein this Court in paragraph-10, observed as under:-

“10. The 5th Respondent has approached the Civil Court and he has filed O.S. No. 48 of 2019, seeking for the relief of Partition and separate possession of 1/27th share in the Suit



properties. It is also seen that the 5th Respondent has filed yet another Suit in O.S. No. 58 of 2017 in which she has claimed for the relief of Permanent Injunction restraining the Defendants not to alienate the Suit properties. In both the Suits, there is no Order passed by the Competent Civil Court injuncting from dealing with the Suit properties. What the 5th Respondent was not able to achieve before the Civil Court is now sought to be achieved through the 3rd Respondent by virtue of a Letter given before this Court, dated 21.2.2020. The 3rd Respondent is a Statutory Authority, who has to strictly perform his function in accordance with law. This Court exercising its, jurisdiction under Article 226 of Constitution of India can never prevent a Statutory Authority from performing his function. Therefore unless and otherwise a Competent Civil Court passes any Interim Order restraining the alienation of the property, the 3rd Respondent has to entertain the documents and register the same, if it is otherwise in order. Ultimately, even if the suit is decreed, the transaction will be subject to the Rule of lis pendens. There is no law in force



which says that no transaction can take place during the pendency of the Suit. That is exactly why Section 52 of the Transfer of Property Act, provides a solution for transactions that take place during the pendency of the Suit.”

11. In view of the facts and circumstances, the order impugned in the present writ petition is in force, since there is no interim order in force in the civil suit filed between the parties.

12. Accordingly, the order impugned in proceedings Na.Ka.No.07/2022 dated 13.01.2022 is quashed and the second respondent is directed to proceed with the registration of the Sale Deed presented by the petitioner by following the procedures as contemplated if the document is otherwise in accordance with the provisions of the Statutes and the Rules in force.

13. With the above directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.



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Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

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To

1.The District Registrar,
O/o.District Registrar,
Cheyyar,
Cheyyar Taluk,
Thiruvannamalai District.

2.The Sub Registrar,
O/o.Sub Registrar Office,
Dusi Village,
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S.M.SUBRAMANIAM, J.

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