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W.P.No.12674 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12674 of 2023

Devaraj

... Petitioner

Vs.

The Sub Registrar,
Bhavani Sub Registrar Office,
Bhavani, Erode District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records and quash the Refusal – Check Slip No.RFL/Bhavani/110/2022 issued by the respondent herein dated 20.09.2022 and further direct the respondent herein to register the sale deed.

For Petitioner

: Mr.S.Lakshmanasamy

For Respondent

: Mr.D.Ravichander
Special Government Pleader



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ORDER

The writ on hand has been instituted challenging the refusal check slip issued by the respondent in proceeding dated 20.09.2022 on the ground that the document presented by the petitioner is not registerable under Section 22-A of the Registration Act.

2. The facts in nutshell as narrated in the writ petition would reveal that the writ petitioner along with six other persons jointly purchased the property to an extent of 35 cents. All seven persons were to be construed as joint owners and they held undivided share in the whole property. On account of the dispute between the seven individual persons, a suit came to be instituted in O.S.No.9 of 2022 on the file of the District Munsif Court at Bhavani for partition. The parties settled through Lok Adalat. Pursuant to the decree, the petitioner presented a document to register his portion of the property demarcated based on the partition between seven joint owners.

3. The Sub-Registrar returned the document i.e., partition deed on the ground that the said seven common owners of the entire property have formed a layout by constituting pathways and therefore, an approval is to be



obtained under Section 22-A of the Act for registering the document.

Production of layout approval is mandatory in view of Section 22-A of the Registration Act.

4. In this background, the learned counsel for the petitioner mainly contended that admittedly seven persons jointly purchased the property and they have divided pursuant to the partition agreed between the parties. Therefore, the petitioner has presented a document to register his portion of the property. Partition deed would not fall under the definition of Sub Section (2) to Section 22-A of the Registration Act and therefore, objection raised by the Sub-Registrar is in violation of the very provision. That apart, there is no new right created between the parties. The existing rights alone are reiterated by presenting the partition deed and thus, the objections are untenable.

5. The learned Special Government Pleader appearing on behalf of the respondent raised a serious objection on the ground that the parties are attempting to circumvent the provisions of Section 22-A of the Registration Act, through back door entry to avoid layout approval, at no circumstances should be permitted, since it will defeat the very spirit of the amendment



made through Section 22-A of the Act.

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6. The learned Special Government Pleader appearing on behalf of the respondent further states that the petitioner has intended to create a new right by partitioning the common property and therefore, it is to be considered as transfer of right under Sub Section (2) to Section 22-A of the Act. Thus, the writ petition is to be rejected.

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 authority concerned”.

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.

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9. The learned counsel for the petitioner states that the parties have never intended to form a layout, but they have partitioned the property for the purpose of ascertaining the individual rights.

10. Whether such a conduct would amounts circumventing the provision or to defeat the purpose and object is to be considered by this Court.

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 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.

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15. In the present case, 35 cents purchased by seven individuals are partitioned as individual plots and two pathways have been created. Therefore, the parties have decided to create an individual right of property of a particular land through partition. While doing so and registering the partition deed it is to be construed as a layout for all purposes, since pathways have been created, which is to be gifted to the local authority for further development and to provide infrastructural facilities and thus, the approval from the planning authority becomes mandatory under Sub Section (2) to Section 22-A of the Registration Act.

16. The learned counsel for the petitioner relied on the orders passed by the learned Single Judge of this Court in the case of **R.Rajagopal vs. The District Registrar, Virudhunagar District and Others** in **W.P.(MD).No.259 of 2021** dated 20.04.2021 and in the case of **T.Maragathamani vs. The District Registrar and Others** in **W.P.(MD).No.7801 of 2021** dated 15.04.2021.



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17. However, in the above orders the fact projected before the Court was different and more specifically, the orders state that “The impugned refusal check slip issued by the second respondent is hereby quashed. There shall be a direction to the second respondent to entertain the sale deed presented by the petitioner for registration after ensuring that the petitioner is dealing with the property only as a Punja Land and not as a housing plot”. Even in the other order the same observations are made.

18. In the above two orders passed in the writ petitions, the interpretation of Section 22-A and Sub Section (2) has not been considered by the Court. That apart, the Court considered that the parties intended to register the punja land and therefore, there is no impediment for registration. Even in such cases, if the plots and pathways are created between the parties, then the pathway created is to be approved by the planning authority. Thus, the parties cannot be allowed to defeat the purpose and object of the amendment made under Section 22-A of the Registration Act.



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19. In this context, purposive interpretation to be adopted, since the amendment has been intended to ensure that illegal forming of layout is prevented and transfer of ownership are not made without obtaining proper planning permission/approval from the competent authorities.

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 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.

21. In the present case, the petitioner had purchased the property jointly and thereafter partitioned by creating two pathways for the purpose of reaching their particular property for their individual ownership and enjoyment. That being the factum, for all purposes it is to be construed as house sites within the meaning of Sub Section (2) to Section 22-A of the



Registration Act. Thus, this Court do not find any infirmity in respect of the objections raised by the respondent / Sub-Registrar.

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22. The petitioner is at liberty to obtain proper approval from the building planning authority and present the same before the Sub-Registrar for the purpose of registering his documents already presented. In the event of any such production of documents, the Sub-Registrar shall proceed with the registration.

23. With this liberty, this Writ Petition stands disposed of. No costs.

05.07.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes



To

The Sub Registrar,
Bhavani Sub Registrar Office,
Bhavani, Erode District.

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S.M.SUBRAMANIAM, J.

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