



W.P.No.18741 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.18741 of 2021

S.Rajakumarai

... Petitioner

-Vs-

1. Inspector General of Registration,
No.100, Santhome High court,
Chennai – 600 028.

2. District Registrar,
Tindivanam, Villupuram District.

3. Sub-Registrar,
Avarapakkam, Tindivanam,
Villupuram District.

4. S.Sankar

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records pending on the file of the respondent in pursuant to the Inspection memo dated 14.12.2020 issued by the first respondent and quash the same and consequentially directing the third respondent to register the sale deed dated 14.12.2020.



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For Petitioners : Mr.G.Baskar
For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader [R1
to R3]
Mr.S.Senthil Nathan [R4]

ORDER

The prayer sought for herein is for a writ of Certiorarified Mandamus to quash the impugned Inspection Memo dated 14.12.2020 issued by the first respondent and consequently directing the third respondent to register the sale deed dated 14.12.2020..

2. The petitioner had presented a document i.e., sale deed in respect of the property at S.No.27/7 at Sitheripattu Village, Tindivanam Taluk, Villpuram District before the third respondent Sub Registrar. The third respondent having perused the said document has issued a inspection memo dated 14.12.2020, under which, he has stated that in respect of the said property, already there is a encumbrance created by the fourth respondent viz., Sankar in favour of one Kumar by way of mortgage deed. Therefore, the said encumbrance have to be cleared, then only, the document presented by the petitioner would be taken up by the



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third respondent for registration.

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3. Aggrieved over the said inspection memo dated 14.12.2020, the petitioner has filed the present writ petition.

4. Heard Mr.G.Baskar, learned counsel appearing for the petitioner, who would submit that, the petitioner purchased the property in question from the erstwhile owner, who is the vendor of the petitioner one Jayasri by way of valid sale consideration, which was also registered by the Register office concerned, from then onwards, the petitioner has become the absolute owner of the property. Therefore, in that capacity, when the petitioner wanted to sell the property in favour of a third party, the document in question when was presented for registration before the third respondent, the aforesaid reason has been given through the impugned memo.

5. In this regard, learned counsel appearing for the petitioner would contend that, the fourth respondent has no connection whatsoever with the property in question and if at all any encumbrance is created by



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the fourth respondent in favour any third party like one Kumar as claimed by the third respondent in the impugned memo, as against which, police complaint has already been given against the fourth respondent, which is pending. Therefore, the fourth respondent since has no way connected with the property in question, that kind of encumbrance, if created that can be enquired into by the Sub Registrar or by the second respondent District Registrar, without which, the refusal made by the third respondent in accepting the document presented by the petitioner for registration is unlawful. Hence, the learned counsel appearing for the petitioner seeks indulgence of this Court.

6. Heard Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the respondents 1 to 3, who would submit that, since already there has been a encumbrance created in respect of the property in question by way of mortgage and that has also been registered by the Registering Authority, unless that registration is canceled, the present document cannot be registered because of the instructions already been given by the Inspector General of Registration to the Registering Authority that, before entertaining any document,



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under which, the transfer of property is effected, the person, who execute such document must have right over the property, for which, atleast a preliminary enquiry has to be conducted by the Registering Authority and on satisfaction of the same only, such registration could be made.

7. Based on these instructions given by the Inspector General of Registration at various point of time, the third respondent acted upon in this case, because of the encumbrance already been made in this property and hence, the learned Special Government Pleader appearing for the respondents 1 to 3 wants to sustain the impugned order.

8. Heard Mr.S.Senthilnathan, learned counsel appearing for the fourth respondent, who would submit that, how the fourth respondent claims right over the property is nothing but a leasehold right, as the original owner one Jayasri, who is vendor of the petitioner in respect of the property in question has executed a unregistered lease deed in favour of the fourth respondent. On that strength, the fourth respondent has executed a mortgage deed in favour of a third party, which has got registered in the third respondent office. Therefore, based on which, if



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any reason is given by the third respondent for refusal of the document presented by the petitioner, it is for the petitioner to resolve the issue with the third respondent, he contended.

9. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10. If the third respondent has given a reason that the mortgage created by the fourth respondent in favour of the third party is the only impediment for accepting the document presented by the petitioner for registration, in this context, it is a stand taken by the fourth respondent that the fourth respondent himself was only a lessee, as he has got a leasehold right over the property that too by way of unregistered lease deed from the erstwhile owner, who is the original owner admittedly, both to the fourth respondent as well as the petitioner, from whom since the petitioner has purchased the property by way of valid sale consideration and the sale deed has got registered, the ownership since has been transferred in the name of the petitioner long back, the fourth



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respondent cannot even claim the leasehold right, unless and until the lease is accepted by the petitioner.

11. Be that as it may. Insofar as the right over the property as claimed by the fourth respondent is concerned, if at all anything is claimed to execute a mortgage in favour of any third party is beyond the right of the fourth respondent, as such right is not vested with the fourth respondent as he has never become the owner of the property.

12. Therefore, the said encumbrance by creating a mortgage deed registered in respect of the property in question between the fourth respondent and a third party can very well be enquired by the third respondent and after ascertaining the aforesaid facts, the third respondent could have taken a decision to entertain the document submitted by the petitioner for registration.

13. Instead, the third respondent has passed this inspection memo dated 14.12.2020 as if that the fourth respondent has made a rival claim of ownership or title over the property and in that capacity, he has



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executed a mortgage deed in favour of the third party and for that reason alone, the third respondent has not accepted the document presented by the petitioner for registration.

14.In view of the above, this Court has no hesitation to hold that the reason stated by the third respondent in the impugned memo would not be sustained under the scrutiny of law. Hence, it is to be set aside. In the result, the following orders are passed:

- ◆ That the impugned order is set aside and as a sequel, there shall be a direction to the third respondent to call for both the fourth respondent and the third party viz., Kumar in whose favour alleged mortgage deed has been created by the fourth respondent and cancel the same and after canceling the said document, the document in question, which is now presented by the petitioner for registration can be taken in to account for the purpose of registration and complete the registration, if the document otherwise in order.



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- ◆ The needful as indicated above shall be undertaken by the third respondent within a period of six(6) weeks from the date of receipt of a copy of this order.

With these directions, this writ petition is disposed of. No costs.

30.01.2023

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
mp
To

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R. SURESH KUMAR, J.



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