



Order dated 01.11.2023
in W.P.No.28623 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.11.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.28623 of 2023

K.Selvakumar

.. Petitioner

Vs.

The Sub Registrar,
Namagiripettai,
Namakkal District.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in Refusal Number RFL/நாமகிரிப்பேட்டை/57/2023, dated 31.08.2023 and quash the same and direct the respondent to register the sale deed dated 28.08.2023 and release the same to the petitioner forthwith.

For petitioner : Mr.N.Suresh

For respondents: Mr.Yogesh Kannadasan, Spl.G.P.



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ORDER

The petitioner has filed the present Writ Petition for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in Refusal Number RFL/நாமகிரிப்பேட்டை/57/2023, dated 31.08.2023 and quash the same and direct the respondent to register the sale deed dated 28.08.2023 and release the same to the petitioner forthwith.

2. It is the case of the petitioner that one Rajendran and others are the absolute owners of the property in Ka.Re.Survey/No.243/2B-- 0.39.50 hectares 0.98 cents, situated at Namagiripettai Village, Namakkal Taluk, being subject matter of the Writ Petition. The said Rajendran purchased the property on 13.06.2002 by a registered sale deed bearing Document No.662/2002 in the office of the Sub-Registrar, Namagiripettai and he was in possession and enjoyment of the same. The said Rajendran and others had executed sale deed



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in favour of the petitioner and others, through a sale deed dated 28.08.2023 for valid consideration. The petitioner being one of the purchaser of the property in Ka.Re.Survey No.243/2B - 0.39.50 hectares 0.98 cents, situated at Namagiripettai Village, Namakkal Taluk, presented the document for registration before the respondent on 31.08.2023 and the document bears correct stamp duty, and there is no under-valuation of the document, but the Sub-Registrar refused to register the document on the basis of the impugned refusal check slip dated 31.08.2023, which is against the provisions of the Registration Act. The impugned check slip had been issued on the ground that the Sub-Registrar had received information by way of notice that a suit in O.S.No.43 of 2022 is pending before the Sub-Court, Rasipuram, which information was obtained through a Lawyer's notice stating that no registration should take place in respect of the property and hence, the Registrar refused to register the document. According to the petitioner, the impugned refusal check slip is against the law laid down by this Court in the case of N.Ramayee Vs. The Sub-Registrar, reported in 2020 (6) CTC 697, in



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which the Division Bench of this Court observed that the Registrar has no right to refuse to register a document except as provided under the Registration Act or any other statute and there is no bar in creating subsequent transfers. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

3. The respondent has filed counter affidavit stating that the vendor of the petitioner, i.e. Rajendran, is arrayed as second defendant in O.S.No.43 of 2022 on the file of the Sub-Court, Rasipuram and he has appeared in the said suit and has the knowledge of pendency of the suit in respect of the property. This fact was suppressed by the petitioner. The respondent had enquired about the said suit and the vendor of the petitioner admitted the pendency of the said suit, but he did not co-operate for further enquiry. As per Section 52 of the Transfer of Property Act, the vendor of the property who is also a party in the said suit, has to get leave from the Court for selling the suit property. This position of law had been explained to the petitioner as well as his vendor Rajendran. As



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per Section 52 of the said Act, without the authority of the trial Court, the sale of property which is the subject matter of the pending suit in O.S.No.43 of 2022, before the Sub-Court, Rasipuram, cannot be made. In the judgment relied on by the petitioner, the prohibition under Section 52 of the said Act, has not been dealt with. The respondent has given reasons in the impugned order for refusing to register the document.

4. Learned counsel for the petitioner submitted that the petitioner presented the document in question, for registration, and during the relevant period, one Vijaya has filed a suit against her brother, for partition and neither she is a coparcener nor she is entitled to the suit property, either as per the amendment of the Hindu Succession Act, 1989 or the Central Amendment of the Hindu Succession Act, 2005. Since she has got married in the year 1984, which is prior to 1989, the said amendment would not be applicable and therefore, as per the amendment, she is not a coparcener. The father and brother of the said Vijaya sold the property even prior to



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the Central Act came into force and she subsequently sold the property to another person and now the petitioner has purchased this property from him, and therefore, he presented the document for registration, which was refused by the respondent on the ground that the said Vijaya has filed the suit for partition. As pointed out by the learned counsel for the petitioner, since the said Vijaya got married even prior to the said Act, she is not a coparcener as per the amendment and already, the property was sold prior to coming into force of the Central Act and therefore, she is not a coparcener as per the Central Act. Therefore, she has no right and interest in the suit property and she has filed the vexatious suit and on that ground, the Registrar/respondent cannot refuse to register the document in question.

5. Though the respondent has relied upon Section 52 of the Transfer of Property Act, it is stated that one Vijaya has filed O.S.No.43 of 2022 which is pending, whether the said Vijaya is a coparcener or not, and whether she is entitled to share or not in the suit property, will have to be decided only in the said civil suit.

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However, prima-facie, on record, there is no reason to refuse to register the document on the ground that the said suit is pending and mere pendency of the suit will not be an impediment to register the document, unless there is a specific order of stay or injunction granted by the competent Court. The Sub-Registrar shall register the document and it is for the party to take the risk regarding the right and alienation of title to the property.

6. Under the above circumstances, the action of the respondent-Sub-Registrar is not legally sustainable. The Writ Petition is allowed. The respondent-Sub-Registrar is directed to register the document if the document is otherwise in order. There shall be no order as to costs.

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To

The Sub Registrar,
Namagiripettai,
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