



W.P.No.29631 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.29631 of 2019

and

W.M.P. Nos.29529 and 29530 of 2019

1. D. Palanisamy
2. Thenmozhi
3. U. Thulasimani
4. Baby

.. Petitioners

Vs.

1. The Branch Manager,
Syndicate Bank,
Zamin Elampalli Branch,
Solasiramani Main Road,
Elampalli – 637 210.

2. The Regional Manager,
Syndicate Bank,
D. No.105-106, Ponnurangam Road (West),
R.S. Puram,
Coimbatore - 641 002.

3. The District Registrar (Administration),
District Registrar Office,
Namakkal.



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4. The Sub Registrar,
Paramathy Sub Registrar Office,
Paramathy Taluk,
Namakkal District.

5. M. Natesan

6. N. Balasubramaniam

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue an order, a Writ of Certiorarified Mandamus calling for the records of the first respondent in proceeding Ref : 6294/Doc/18-19, dated 18.03.2019, quash the same and direct the first respondent to issue no objection certificate to the petitioners 3 and 4 with respect to their 1/3 share in the schedule of properties morefully described in Memorandum of Deposit of title deed dated 17.05.2011 registered as Doc. No.1997/2011 on the file of fourth respondent and consequently direct the fourth respondent to register the Doc. No.P/Paramathy/1/2019.

For Petitioners : Mr.T.L.Thirumalaisamy
For Respondents : Ms.T.Hemalatha for R1 & R2
Mr.K.M.D. Muhilan,
Addl. Govt. Pleader for R3 and R4
Mr.R. Prabhakar for R5 and R6

ORDER

This writ petition has been filed to quash the proceedings in Ref : 6294/Doc/18-19, dated 18.03.2019 passed by the 1st respondent and



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consequential direction for issuance of No objection Certificate to the petitioners 3 and 4 with respect to their 1/3rd share in the schedule of properties morefully described in Memorandum of Deposit of title deed dated 17.05.2011 registered as Doc. No.1997/2011 on the file of 4th respondent and further direction to the 4th respondent to register the Doc. No.P/Paramathy/1/2019.

2. It is the case of the petitioners that properties comprised in S. Nos.173/2, 174/3, 235/1, 237, 238/3, 239/1B, 239/1C, 239/3B, 239/4, 239/5K, 239/5L and 239/2 situated at Kuprikapalayam Village, Paramathy Sub-Registraton District, Namakkal District originally belongs to Muthusamy Gounder, who is the maternal grand father of petitioners 3 and 4. The said Muthusamy Gounder died on 28.02.2016, leaving behind his daughter Kaveri and Son Natesan, who is the 5th respondent along with legal heirs of pre-deceased daughter Pappathi, the petitioners 3 and 4. Therefore, the petitioners 3 and 4 are jointly entitled to 1/3rd share and the said Kaveri and the 5th respondent are each entitled to 1/3rd share. Earlier, the said properties were mortgaged with the 1st respondent's bank for obtaining loan by way of Memorandum of Deposit of title deed dated



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17.05.2011 registered as Document No.1997/2011 on the file of SRO, Paramathy. After the death of said Muthusamy Gounder, petitioners 3 and 4 have executed a Sale deed, dated 02.01.2019 in favour of petitioners 1 and 2 for a sale consideration of Rs.10,97,500/-, which is pending before the 4th respondent for registration. Due to objections received, the 4th respondent has not registered the same and issued a notice to petitioners 3 and 4 to obtain a No Objection Certificate from the 1st respondent and to submit the same for further process along with necessary enclosures viz., Legal Heirship Certificate of Muthusamy Gounder, etc. Thereafter, Legal Heirship certificate as well as Adangal with respect to the aforesaid properties were submitted along with explanations to the 4th respondent. Being unsatisfied, the 4th respondent returned the original sale deed presented for registration, against which, the petitioners filed an appeal in Appeal No.1 of 2019 before the 3rd respondent /appellate authority, who in turn dismissed the appeal on 15.07.2019. Further, it is averred that the said appeal was dismissed primarily on the basis of a communication received from the 1st respondent stating that “Not to entertain any transactions under the MOD Doc. No.1997 of 2011 without their consent”. It is the grievance



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of the petitioners that they have requested for No Objection Certificate from the 1st respondent, but they have refused to issue the same. Hence, this writ petition has been filed with the aforesaid prayer.

3. Learned counsel for the petitioners submit that petitioners 1 and 2 are the proposed purchasers and the petitioners 3 and 4 are co-sharers of the properties, which has been mortgaged by the respondents 5 and 6 along with Muthusamy Gounder under Mortgage Deed dated 17.05.2011 registered as Document No.1997 of 2011. He further submits that petitioners 3 and 4 are jointly entitled for 1/3rd share of the subject properties and therefore, on the ground of they being owners of their respective shares, the 1st respondent ought to have issued No Objection Certificate. He also submits that without considering the documents filed by the petitioners, the 3rd respondent has mechanically passed the order, dated 15.07.2019, thereby dismissed the appeal on the basis of the letter issued by the 1st respondent.

4. In support of his submission, reliance has been placed on the following judgments :



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a) *N.Ramayee vs. Sub Registrar reported in 2020 (6) CTC 697*

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b) *Vadamugam Vellode NalukaraiNattu Goundergal Sangam*

Vs Inspector General of Registration, 2021 (1) CTC 535

5. In view of the above, he submitted that the impugned order, dated 18.03.2019 passed by the 1st respondent is unsustainable and irrational. Hence, he prays for quashment of the said order, dated 18.03.2019 and seeks for appropriate direction to the official respondents for the issuance of No Objection Certificate.

6. Replying to the contentions raised by the petitioner, Ms.T.Hemalatha, learned counsel appearing for the respondents 1 and 2 submits that on 16.02.2019, the respondents 5 and 6 along with one Muthusamy Gounder availed loan for land development and crop by way of a Mortgage Deed dated 17.05.2011 registered as Doc. No.1997 of 2011 on the file of the Sub- Registrar, Paramathy for the subject properties. Hence, on clearance of the aforesaid mortgage deed by the parties involved therein, the 1st respondent can issue no objection certificate. Hence, he prays for mere dismissal of this writ petition.



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7. Mr.K.M.D. Muhilan, learned Additional Government Pleader appearing for the respondents 3 and 4 submitted that due to non submission of requisite documents by the petitioners 3 and 4, the sale deed was not registered by the 4th respondent. He also submitted that as against the order of the 4th respondent, appeal has been preferred by the petitioners 3 and 4 and based on the 1st respondent's Communication, the said appeal was also dismissed. Therefore, on submission of the requisite documents by the petitioners 3 and 4, the respondents 3 and 4 can act further and hence, he seeks for issuance of appropriate directions in this regard.

8. Per contra, Mr.R. Prabhakar, learned counsel for the 5th and 6th respondents/ contesting respondents submitted his arguments based on the counter affidavit. He submitted that petitioners 1 and 2 are pendente lite purchasers and without having any right they are not entitled for filing this writ petition and therefore, the writ petition as against petitioners 1 and 2 are not maintainable.

9. Further, the learned counsel submitted that originally the properties in respective survey numbers belong to 5th respondent's great grandfather Periyagounder and after the demise of Periyagounder on



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28.02.2016, the properties devolved on all the legal heirs of Periyagounder viz., Pavayee, Sellayee, Muthusamygounder and Nallayee. He vehemently argued that a suit for partition in O.S. No.261 of 2018 has been filed by the aggrieved parties as against petitioners 3 and 4 along with 5th respondent and Kaveri, which is pending on the file of the Principal District Court, Namakkal for determination of quantum of share, wherein petitioners 3 and 4 have been arrayed as defendants 2 and 3 and notices were sent to them. But the petitioners 3 and 4 have suppressed the said fact in the affidavit filed in support of this writ petition. On the aforesaid points, this writ petition is liable to be dismissed and accordingly, he prays for the same.

10. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials placed on record.

11. A bare perusal of records reveal that the suit properties are ancestral properties of petitioners 3 and 4 and petitioners 1 and 2 are prospective buyers of the said properties. Further, it reveals that the petitioners 1 and 2 are aware of the encumbrances against the subject properties and still they are interested to purchase the said properties.



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Further a suit in O.S. No.261 of 2018 as against petitioners 3 and 4 is also pending on the file of the Principal District Court, Namakkal for determination of quantum of shares. Determination of shares in the property is the prayer in the suit which admittedly is pending. Determination of shares is a disputed question of fact, which cannot be decided by this Court under Article 226 of the Constitution of India.

12. Attention of this Court is drawn to the judgment of the Division Bench of this Court in the case of ***N.Ramayee vs. Sub Registrar reported in 2020 (6) CTC 697***, particularly to paragraph No.46 and for better appreciation, the said paragraph is extracted hereunder :

46. (38). It is also brought to our notice about the new Circular in No.24011/C1/2020, dated 8.10.2020. It is the contention of the learned Additional Advocate General that the Registrar has power to regulate the registration in order to prevent fraud and hence, the Registrar is having powers under the Registration Act to regulate the registration and the right to refuse the document and that such power is available under Section 71 of the Registration Act. Such contention is not acceptable for the simple reason that the Circular bars transfer of property on the ground that when a Lease is already executed in respect of the property, without expiry of the Lease, transfer cannot be permitted or without consent of lessee no registration is permissible. Further, insisting a no objection from



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Mortgagee before registration is also against the very substantive provisions of law. If any property is sold with existing Mortgage, the transferee steps into the shoes of Mortgagor. He has the right to redeem the property by paying the Mortgage money. Therefore, in the name of regulating the registration, any Circular which is in the nature of violating the substantive provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law. If the contention of learned Advocate General that without seeking declaration and cancellation of the Agreement of Sale, subsequent Agreement or transaction cannot be registered is accepted then such restriction, in fact, infringes the very Constitutional right of the citizen provided under Article 300-A of the Constitution.

13. Attention of this Court is also drawn to the judgment of the Division Bench of this Court in the case of ***Vadamugam Vellode NalukaraiNattu Goundergal Sangam Vs Inspector General of Regisration, 2021 (1) CTC 535*** in W.P.No.12585 of 2020 & W.M.P.Nos.15518 & 15521 of 2020. The relevant portion of the order is extracted under as:

“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 injunction 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 above discussion, the impugned Letter of the 3rd Respondent, dated 21.02.2020 is hereby quashed and the 3rd Respondent is directed to entertain the documents submitted for registration and register the same, if it is otherwise in order. It goes without saying that the necessary Stamp Duty and Registration Fee will be paid at the time of submitting the document for registration.”

12. This Writ Petition is accordingly allowed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.”, particularly to paragraph No.46 and for better appreciation, the said paragraph is extracted hereunder :

14. The aforesaid decisions are squarely applicable to the facts of the instant case. The law is well settled that mere pendency of suit cannot be a ground for not issuing the No Objection Certificate by the respondents, when there is no restraint order.



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15. In view of the above, upon satisfaction of the Legal Heirship

Certificate produced by the petitioners 3 and 4 and also the shares of the petitioners 3 and 4, the 4th respondent is directed to entertain the documents submitted by the petitioners 3 and 4 and shall issue No Objection Certificate, after hearing all the legal Heirs of the deceased Muthusamy Gounder.

16. With the aforesaid directions, this writ petition is disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

03.04.2023

Speaking/Non Speaking order

Index : Yes/No

Internet: Yes/No

Neutral citation : Yes / No

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To

1. The Branch Manager,
Syndicate Bank,
Zamin Elampalli Branch,
Solasiramani Main Road,
Elampalli – 637 210.

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