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W.P.Nos.35180 & 35181of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.35180 & 35181of 2022

Vijayan

... Petitioner
in 2WPs

Vs.

The Sub-Registrar
Office of the Sub Registrar
Avaraipakkam
Tindivanam – 604 001.

... Respondent
in 2WPs

Prayer in W.P.No.35180 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari Mandamus, calling for the records pertaining to the impugned Refusal Check Slip No.12/2022 dated 01.11.2022 on the file of the respondent and quash the same and consequently directing the respondent to register the said Gift Deed dated 27.10.2022 submitted by the petitioner.

Prayer in W.P.No.35181 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari Mandamus, calling for the records pertaining to the impugned Refusal Check Slip No.13/2022 dated 01.11.2022 on the file of the respondent and quash the



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same and consequently directing the respondent to register the said Gift Deed dated 27.10.2022 submitted by the petitioner.

For Petitioner

: Mr.B.Gurunathan
(in 2WPs)

For Respondent

: Mr.D.Ravichander
Special Government Pleader
(in 2WPs)

COMMON ORDER

The refusal check slips issued by the respondent on 01.11.2022 are sought to be quashed in the present writ petition.

2. The petitioner presented a gift deed for registration and the respondent refused to register the same and issued impugned check slips stating that a Civil Suit in A.S.No.34 of 2021 is pending. In other words the Sub Registrar refused merely on the ground that the a civil litigation is pending between the parties.

3. Mere pendency of a Civil Suit is not a bar for registering a document, if such documents are presented or otherwise in accordance with the procedures contemplated under the Registration Act and Rules in force.



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4. The issues in this regard are no more *res integra*. The Hon'ble Division Bench of this Court in the case of ***N.Ramayee Vs. Sub Registrar, Registration Department, Salem and Another*** reported in (2020) 6 CTC 697 held that the pendency of a Civil Suit cannot be a bar for registering a document. The relevant portion of the judgment reads 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 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*



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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 v. 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 v. 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



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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. 1In 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.”



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5. In view of the principles laid down in the judgment (cited *supra*), the impugned refusal check slips issued by the respondents in proceedings Nos.12 and 13 of 2022 dated 01.11.2022 are quashed and the respondent is directed to register the document, if the document is in accordance with the procedures contemplated under the Statutes and Rules in force.

6. With this direction, these Writ Petitions stand allowed. No costs.

08.06.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

The Sub-Registrar
Office of the Sub Registrar
Avaraipakkam
Tindivanam – 604 001.



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S.M.SUBRAMANIAM, J.

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