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W.P.(MD)NO.2276 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.2276 of 2023

K.Eswari

... Petitioner

Vs.

The Sub Registrar,
Sub Registrar Office,
Melur,
Madurai District.

... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondent to register the sale deed executed by petitioner in favour of Chowthri, S/o.Murugesan, Kulathur Village, Paramakudi Taluk, Ramanathapuram District or in the name of anybody else in respect of the property comprised in S.No.52/3 to an extent of 7 cents situated at Attukulam Village, Melur Registration Sub District, Melur Taluk, Madurai District.

For Petitioner : Mr.R.Murugan

For Respondent : Mr.R.Baskaran,
Additional Advocate General,
assisted by,
Mr.S.Shanmugavel,
Additional Government Pleader.

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ORDER

Heard the learned counsel on either side.

2. The petitioner had entered into a registered sale agreement with one Tamilselvi in the year 2011. The said Tamilselvi did not come forward to execute the transaction. Now the petitioner wants to alienate the property in favour of third party. However, she is encountering difficulty. The registering authority has made it clear that unless the earlier encumbrance is removed, he will not entertain the sale deed executed by the writ petitioner. That necessitated the filing of the writ petition.

3. The learned Additional Advocate General submitted that in the light of the recently amended Rule 55A of the Registration Rules, the stand of the respondent cannot be faulted.

4. The stand of the respondent has to be negatived for the following reason:



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The Principal Seat of Madras High Court vide order dated 08.02.2023 made in ***W.P.No.2758 of 2023 (The Federal Bank Ltd., Rep. by its Senior Manager, Coimbatore V. The Sub Registrar, Pollachi and others)*** has struck down the first proviso to Rule 55A of the Registration Rules. The first proviso to Rule 55A of the Registration Rules reads as follows:-

"55A. (i) The registering officer before whom a document relating to immovable property is presented for registration, shall not register the same, unless the presentant produces the previous original deed by which the executant acquired right over the subject property and an Encumbrance Certificate pertaining to the property obtained within ten days from the date of presentation:

Provided that in case an encumbrance as to mortgage, orders on attachment of property, sale agreement or lease agreement exists over the



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property, the registering officer shall not register such document if the time limit for filing of suit is not lapsed, or No Objection Certificate is not granted by the appropriate authority or raising of the attachment is not done, as the case may be:

Provided further that in case the previous original deed is not available as the property being an ancestral one, the registering officer shall not register such document, unless the presentant produce any revenue record evidencing the executant's right over the subject property such as patta copy issued by Revenue Department or tax receipt:

Provided also that if the previous original deed is lost, the registering officer shall register such document only on production of non-traceable Certificate issued by the Police department along with the advertisement published in the local Newspaper as to the notice of loss of the previous original deed:



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Provided also that production of the previous original deed shall not be necessary where the Government or a Statutory body is the executant of the document or for such class of documents as may be notified by the Inspector General of Registration, from time to time. "

5. Since the first proviso that has been struck down by the aforesaid decision, the respondent cannot cite the earlier sale agreement executed by the petitioner as a reason for not entertaining the sale deed executed by the petitioner subsequently. This writ petition stands allowed. No costs.

16.02.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

The Sub Registrar,
Sub Registrar Office,
Melur, Madurai District.



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G.R.SWAMINATHAN,J.

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