



W.P(MD)No.5505 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.10.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5505 of 2022

A.Aravindaraj

... Petitioner

Vs.

1.The District Registrar,
Office of the District Registrar,
Y.Othakadai,
Madurai District.

2.The Sub-Registrar,
Madurai North,
Y.Othakadai,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to cancel all the encumbrances in respect of 495 square foot comprised in Town Survey No.687 situating at Tallakulam Village in Madurai town in accordance with law within the time stipulated by this Court.



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For Petitioner : Mr.S.Malaikani

For Respondents : Mr.K.Balasubramani,
Spl. Government Pleader.

ORDER

Heard both sides.

2.The case of the petitioner is that his grandmother / Suseela purchased the petition mentioned property vide sale deed dated 01.09.1998 from one Rajendran. It is a registered document. The petitioner would claim that certain encumbrances were subsisting on the property in question but they were cleared by his grandmother. The said Suseela executed a Will dated 01.07.2005 in favour of the petitioner and his brother / Arunachalam. Now the petitioner's family wants to deal with the property. But they are unable to do so on account of the reflection of the encumbrances in E.C. Register. That is why, the petitioner filed the present writ petition for cancelling all the encumbrances.



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3.The relief sought for cannot be granted. I am of the view that the petitioner was not even obliged to file this writ petition. If any mortgage created in respect of the property, it should have been enforced within 30 years. The limitation period has already expired. In any event, merely because, the earlier mortgage is still shown in the encumbrance register that will not come in the way of the petitioner from dealing with the property. The Hon'ble Division Bench of this Court in the decision reported in **2020 (6) CTC 697 (N.Ramayee Vs. The Sub Registrar, Registration Department, Salem)** had held as follows:-

“37. 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



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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.

46. It is also brought to our notice about the new circular in No. 24011/C1/2020 dated 08.10.2020. 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 mortgagee before registration is also against the very substantive provision 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



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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.”

In view of the said decision of this Court, the petitioner can very well deal with the property along with his brother / Arunachalam.

4. With this observation, this writ petition is disposed of. No costs.

04.10.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

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G.R.SWAMINATHAN, J.

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