

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.03.2023**

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

W.P.(MD) No.12173 of 2020

S.Vijayalakshmi

... Petitioner

/vs./

The Sub Registrar,
West Karur Sub Registration Office,
Karur.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in Refusal Check Slip Number RFL/West Karur/30/2020 dated 19.08.2020 and quash the same as illegal and arbitrary and without jurisdiction and consequently directing the respondent to register the Mortgage deed dated 19.08.2020 executed by the petitioner.

For Petitioner : Mr.K.Suresh

For Respondent : Mr.M.Prakash
Additional Government Pleader

ORDER

Challenging the refusal of the respondent to register the mortgage deed dated 19.08.2020 submitted for registration by the petitioner, the above writ petition has been filed.

2.The brief facts necessary for disposing of this writ petition are herein below set out.

3.The property in S.F.No.2186/A measuring Ac.0.70.395 at Andankovil East Village, Manmangalam Taluk, Karur District was purchased by the petitioner's father and mother, Vaiyapuri Gounder and Sellammal respectively under a registered sale deed dated 26.07.1972. They have been in possession and enjoyment of the same ever since then and the petitioner's parents had died on 10.12.1977 intestate leaving behind surviving the petitioner and his brother as their legal heirs. The petitioner would submit that he and his brother are entitled to an equal share in the said property.

4. On 19.08.2020, the petitioner had executed a mortgage deed in favour of one Eswaramoorthy in respect of her share in the property for the purpose of availing a loan. The document was presented for registration and necessary stamp duty registration charges etc., have been paid. However, the respondent had refused to register the document by passing the impugned order, wherein the petitioner had stated that the property belonged to the Government/HR & CE, Waqf Board/Panchami lands etc.

5. The petitioner would further submit that the property does not belong to any temple or Waqf. Further, there is no document that has been produced to show their entitlement to the land. Therefore, when the matter had come up on 09.03.2023, the learned Additional Government Pleader for the respondent was directed to produce the letter of objection or any other document that had been given by the Waqf against the registration and the matter was directed to be listed today. Today, when the matter came up, the learned Additional Government Pleader fairly conceded that there is no objection in respect of the said property.

6.Mr.K.Suresh, learned counsel appearing on behalf of the petitioner would submit that in the judgment of this Court in the case of ***Sudha Ravi Kumar and another Vs. The Special Commissioner and Commissioner, HR & CE Department, Chennai and others*** reported in ***(2017) 3 CTC 135***, the challenge in a batch of writ petitions was to the orders passed by the Sub-Registrar under the Registration Act, 1908, (*herein after referred to as Act*), either refusing to register the sale deed or refusing to return the sale deeds after registration.

7.After discussing the powers of the Registering Authority and a perusal of Section 22(A) of the Act, the Bench had held that although the Registering Authority had the right to refuse to register any document of sale, transfer, gift, mortgage etc., in respect of any property belonging to, or given or endowed for any religious institutions governed by the Tamil Nadu HR & CE, Act, he should first satisfy himself that the property belongs to the religious institutions and he must possess atleast some material. The Bench thereafter went on to frame certain guidelines for getting such documents to register by accepting the objections raised under Section 22A of the Act. The Bench thereafter had set out the following directions:-

“26.In view of the above discussions, all the writ petitions are allowed and the impugned orders are set aside with the following directions:

(i) The registering authority before whom the document has been presented shall cause service of notice on the parties to the deeds and also to the objector / religious institution, hold summary enquiry, hear the parties and then either register or refuse to register the document by passing an order having regard to the relevant facts as indicated above.

(ii) If the registering authority, refuses to register any document by accepting the objections raised under Section 22-A of the Registration Act, the aggrieved may file a statutory appeal under the Act.

(iii) If the objections raised under Section 22-A of the Act by the religious institution are rejected and the document is registered, the remedy for the religious institution is to either approach this Court by way of a writ petition seeking cancellation of the registration or for any other relief or to approach the civil Court for declaration of the title and for other consequential reliefs.

(iv) If the registering authority refuses to register the document acting on the objections raised by a religious institution under Section 22-A of the Registration Act, the parties to the deed will be at liberty to straightaway approach the Civil Court for declaration of title and other relief without availing the opportunity for filing a statutory appeal.

(v) We further direct that if the deed has already been registered without there being any objection by the religious institution under Section 22-A of the Act, the document shall be returned to the parties concerned leaving it open for the religious institution to approach either the High

Court under Article 226 of the Constitution of India or the Civil Court for appropriate relief as indicated above. At any rate, the registering authority shall not withhold the deed which has already been registered.

*(vi) Consequently the connected miscellaneous petitions are closed.
No costs."*

8. Therefore, in the instant case, the respondent has not been able to show any material as to how the Waqf has interest in the property. Therefore, applying the ratio in the judgment cited supra, the Writ Petition is allowed. The respondent is directed to register the document and hand over the same to the petitioner within a period of three weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

17.03.2023

To

1. The District Revenue Officer,
Karur.

2.The Revenue Divisional Officer,
Karur.

3.The Special Tahsildar,
Land Survey and Settlement,
Karur.

W.P.(MD) No.12173 of 2020

P.T.ASHA, J.

mm

W.P.(MD) No.12173 of 2020

17.03.2023