



W.A(MD)No.921 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A(MD)No.921 of 2022
and
C.M.P(MD)No.7668 of 2022**

1.The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai.

2.The District Registrar,
District Registration Office,
Madurai.

3.The Sub Registrar,
Sub Registrar Office,
Tallakulam, Madurai.

... Appellants/Respondents

-VS-

1.M.Murugan

... 1st respondent/writ petitioner

2.S.Sabeer Hussain

... 2nd Respondent

(2nd respondent is impleaded vide Court order dated 24.01.2023
made in C.M.P(MD)No.730 of 2023 in W.A(MD)No.921 of 2022
by DKKJ and RVJ)



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PRAYER: Appeal filed under Clause 15 of Letters Patent, against the order passed in W.P(MD)No.6962 of 2022, dated 21.06.2022.

For Appellants : Mr.Veera Kathiravan,
Additional Advocate General, assisted by
Mr.M.Prakash,
Additional Government Pleader
For R-1 : Mr.M.Ajmal Khan,
Senior Counsel for
Mr.T.Antony Arulraj
For R-2 : Mr.S.Venkatesh

JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

Being aggrieved by the direction issued by the writ Court vide order dated 21.06.2022 made in W.P(MD)No.6962 of 2022, to register the decree in O.S.No.357 of 2021, dated 05.01.2022 granted by the IV Additional District Judge, Madurai, the Inspector General of Registration is on appeal

2. The petitioner in the writ petition had filed a suit in O.S.No.357 of 2021 on the file of the IV Additional District Court, Madurai, seeking a money decree for a sum of Rs.1,51,25,000/- and interest at 12% per annum on Rs.1,50,00,000/- against one S.Sabeer Ussain, the second respondent herein.



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The amount that was sought to be recovered was the amount paid as advance by the first respondent herein under a unregistered sale agreement, dated 18.01.2021. In the said suit, a compromise was arrived at, in and by which, the defendant had agreed to receive the balance of consideration and execute a sale deed if he is successful in the litigation before the Revenue Authorities seeking patta. In the event of his failure, the defendant had agreed to return the advance amount. This decree in effect constituted a substituted agreement of sale subject to certain conditions. The writ petitioner presented the decree for registration before the third respondent who refused to register the document. Hence, the writ petitioner had approached this Court seeking a Mandamus as stated above. The writ petition was resisted by the appellants contending that the decree relates to a property which belongs to the Government and therefore, the same cannot be registered in view of Section 22(A) of the Registration Act, 1908. The next contention that was projected was that being a decree which affects immovable property, it can be registered only with the jurisdictional Sub-Registrar of the place where the property is situate. The third ground is that a litigation relating to grant of patta is pending in W.A.No.1122 of 2009 at the instance of the defendant in the suit and others and an order of stay has been granted. The Government has also been made as a party to the present writ petition. The writ Court rejected the contentions



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of the appellants for reasons recorded and allowed the writ petition. Hence, this writ appeal.

3. Mr.Veera Kathiravan, learned Additional Advocate General would reiterate all the three submissions made before the writ Court. He would submit that even though the decree is only an agreement to convey, being a decree of the Court, it cannot be treated lightly. He would point out that registration of this document would amount to create encumbrance over the property which belongs to the Government and therefore, the Registrar was justified in refusing registration. Further arguing, the learned Additional Advocate General would point out that since the valuation of the property is 'zero', the document cannot be registered. Relying upon Section 29(2) of the Registration Act, 1908, the learned Additional Advocate General would content that a copy of the decree or order can be presented for registration in the office of the Sub-Registrar in whose sub-District the order was made or where the decree or order does not affect immovable property. According to the learned Additional Advocate General, if a decree or order affects immovable property, then the registration must be done with the jurisdictional Sub-Registrar of the place where the property is situate and not in any other place. The pendency of the writ appeal is invoked as a ground to refuse



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registration.

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4. Contending contra, Mr.M.Ajmal Khan, learned Senior Counsel appearing for the respondent would submit that the first submission of the learned Additional Advocate General based on Section 22(A) of the Registration Act, is wholly misconceived. He would point out that what is prohibited under 22(A) is only registration of instruments relating to transfer of immovable property by way of **Sale, Gift, Mortgage or Lease and not otherwise**. Drawing our attention to Section 54 of the Transfer of Property Act, 1882, the learned Senior Counsel would submit that the substantive law, namely, Transfer of Property Act, 1882, makes it clear that the agreement of sale does not create any interest in immovable property and agreement of sale will not stand covered by Section 22(A) of the Act.

5. On the contention that the valuation is 'zero', the learned Senior Counsel would submit that once it is a Court's decree, the Registrar has no discretion in valuation and he has to accept the valuation made in the decree. Only if it is a sale deed, the Registrar can raise question under Section 47(A) of the Registration Act and not in cases of agreement of sale.



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6. The learned Senior Counsel would further submit that pendency of the writ appeal has nothing to do with the present transaction. The writ appeal was filed by the defendant in the suit along with others claiming title of the property and challenging a direction to issue patta to one Manali R.Srinivasan, who is the petitioner in W.P(MD)No.12425 of 2008.

7. We have considered the rival submissions.

8. The decree granted by the Court which is sought to be registered is nothing but an agreement of sale subject to certain conditions. As provided under Section 54 of the Transfer of Property Act, such a decree does not create an interest in immovable property. It is settled law that even a decree for specific performance will not create an interest in immovable property and that is the precise reason why Section 28 of Specific Relief Act, 1963, has been enacted to enable the Court to rescind the decree for specific performance under certain circumstances. Therefore, the first submission of the learned Additional Advocate General overlooks the crucial provision of substantive law.



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9. We are unable to accept the argument of the learned Additional Advocate General relying upon Section 22-A of the Registration Act. Section 22-A obliges the registering authority to refuse registration of certain documents enumerated in Sub-Sections 1 and 2 of the said Section.

10. Section 22-A of the Registration Act, reads as follows:

*“22-A – Refusal to register certain documents:-
Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents, namely;-*

(1) instrument relating to the transfer of immovable properties by way of sale, gift mortgage, exchange or lease,-

(i) belonging to the State Government or the local authority or Chennai Metropolitan Development Authority established under Section 9-A of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972);

(ii) belonging to, or given or endowed for the purpose of, any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) is applicable;



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(iii) donated for Bhoodan Yagna an vested in the Tamil Nadu State Bhoodan Yagna Act, 1958 (Tamil Nadu Act XV of 1958); or

(iv) of Wakfs which are under the superintendence of the Tamil Nadu Wakf Board established under the Wakf Act, 1995 (Central Act 43 of 1995),

unless a sanction in this regard issued by the competent authority as provided under the relevant Act or in the absence of any such authority, an authority so authorised by the State Government for this purpose, is produced before the registering officer;

(2) instrument relating to the transfer of ownership of lands converted as house sites without the permission for development of such land from planning authority concerned:

Provided that the house sites without such permission may be registered if it is shown that the same house site has been previously registered as house site.”

The explanations are not material and therefore, they are omitted.



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11. Very reading of Sub-Section 1 of Section 22-A of the Act, would reveal that what prohibited is the registration of an instrument relating to transfer of immovable properties by way of **Sale, Gift, Mortgage, Exchange or Lease**. Therefore, an agreement of sale which does not create interest in immovable property would not come within the ambit of Section 22-A. We are in entire agreement with the submissions of the learned Senior Counsel on this question.

12. The next ground that is urged by the learned Additional Advocate General is regarding the place of registration. Sections 28 and 29 of the Registration Act, deals with place of registration. They read as follows:

“28. Place for registering documents relating to land. - Save as in this part otherwise provided, - (a) every document mentioned in [clauses (a), (b), (c), (d), (e), (f), (g), (h), and (i)] of sub-section (1) and sub-section (2) of section 17 in so far as such document affects immovable property and in clauses (a), (b), (c) and (cc) of section 18, shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the



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State of Tamil Nadu; and

[Provided that every document mentioned in clause (h) of sub-section (1) of section 17 may also be presented for registration in the office of the Sub-Registrar within whose jurisdiction the principal ordinarily resides.]

(b) any document registered outside the State of Tamil Nadu in contravention of the provisions of clause (a) shall be deemed to be null and void.]

29. Place for registering other documents:- (1) Every document not being a document referred to in section 28, or a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed or in the office of any, other Sub-Registrar under the State Government at which all the persons executing and claiming under the documents desire the same to be registered.

(2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immovable property, in the office of any other Sub-



Registrar under the State Government at which all the persons claiming under the decree or order desire the copy to be registered.”

13. Section 28 provides that every document mentioned in [clauses (a), (b), (c), (d), (e), (f), (g), (h), and (i)] of sub-section (1) and sub-section (2) of section 17 in so far as such document affects immovable property and in clauses (a), (b), (c) and (cc) of section 18, shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the State of Tamil Nadu. Therefore, wherever a right or interest of immovable property is created, Section 28 provides that a document shall be registered only in the place where the property is situate and not in any other place. In respect of a power of attorney, an explanation is given in the proviso.

14. Section 29 provides for place of registration for the other documents which are not covered under Section 28. Section 29 takes care to exclude a document referred to under Section 28, a copy of a decree or order. Therefore, Section 29(1) will not apply for registration of a copy of a decree or order. It is Section 29(2) which would cover the situation. Section 29(2)



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reads as follows:

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“29(2). A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immovable property, in the office of any other Sub-Registrar under the State Government at which all the persons claiming under the decree or order desire the copy to be registered.”

15. Section 29(2) has two limbs. The first limb provides that a decree or order of a Court may be presented for registration in the office of the Sub-Registrar in whose Sub-District, **the original decree or order was made**. The second situation that is contemplated under Section 29(2) is, where the decree or order does not affect immovable property, it may be registered in the office of any other Sub-Registrar under the State Government on which all persons claiming under the decree or order desire the copy to be registered. This would mean that if a decree or order does not affect the immovable property, by consent of parties to the document, can register the document in any office of the Sub-Registrar within the state of State of Tamil Nadu.



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16. Therefore, we have to necessarily conclude that the office of the third respondent within whose jurisdiction the Court had passed the decree is situate, will also be a proper office. Moreover, since the very decree is only an agreement of sale which does not affect immovable property, it will not come within the ambit of Section 28. Therefore, registration can be done either at the office of the Sub-Registrar in whose Sub-District, the original decree or order was made or at any other place as desired by the parties to that document. We are therefore, unable to sustain the objections of the learned Additional Advocate General on this issue also.

17. We are supported in our view by a judgment of a Division Bench of this Court in *R.M.S.Deivanai Achi v. P.L.L.N. Kannappa Chettiar* reported in 65 L.W. Page 100, wherein the Division Bench has observed as follows:

“7.Our attention has been drawn to R. 292(b) of the Registration Manual, Part II, page 91. According to this rule as interpreted in practice by the Registration department, a person registering such a decree as that before us has the option of registration either under S.28 or under S.29(2). On a careful consideration of these two sections, we are of opinion that this is the correct legal position. Such a decree as



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that we are considering is clearly-compulsorily registrable but S.29(2) allows registration to be done at the opinion of the party in the office of the Sub-Registrar in whose sub-district the original decree or order was made.”

18. The third objection of the learned Additional Advocate General is the pendency of the writ appeal. As rightly pointed out by the learned Senior Counsel for the first respondent, the writ appeal has been filed challenging a direction issued by the writ Court to grant patta to the petitioner in W.P(MD)No.12425 of 2008. The defendant in the suit along with others had in fact, made a claim over the property. Therefore, pendency of that writ appeal cannot be a ground to refuse registration.

19. Having answered all the three issues against the appellants, we have to necessarily dismiss this writ appeal. Therefore, the writ appeal fails and it is accordingly, dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.]

[L.V.G., J.]

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NCC :Yes



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