



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.08.2023**

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRVARTHY**

**W.A(MD)NO.1312 OF 2023
and
C.M.P(MD)No.9934 of 2023**

1.The Sub-Registrar,
Othakadai,
Madurai – 625 107.

2.The District Registrar/ADM,
Deputy Inspector General of Registration,
Madurai North Region District,
Madurai – 625 107.

:Appellants/Petitioners/Respondents

.vs.

A.R.Sachidhanandh : Respondent/Respondent/Writ
Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.M.P(MD)No.8745 of 2023 in W.P(MD)No.5710 of 2022, dated 25.4.2023 and remitting the matter back to the learned Writ Court to clarify the order passed in W.P(MD)No.5710 of 2022, dated 31.3.2022.



For Appellants

:Mr.Veerakathiravan
Addl.Advocate General
for Mr.J.Ashok
Addl.Govt.Pleader

For Respondent

:Mr.Issac Mohanlal
Senior Counsel
for Mr.S.Venkatesh

JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR,J.**]

This Writ Appeal is directed against the order in the Petition for Clarification sought by the Sub-Registrar, Othakadai in W.M.P(MD)No.8475 of 2023 in W.P(MD)No.5710 of 2022, dated 25.4.2023.

2.Mr.Issac Mohanlal, learned Senior Counsel representing Mr.S.Venkatesh, learned counsel on record, takes notice for the respondent. By consent of both parties, the Writ Appeal is taken up for final disposal at the admission stage itself.

3.Earlier, the respondent herein filed W.P(MD)No.5710 of 2022 for issuance of a Writ of Certiorarified Mandamus to quash the Check Slip, dated 27.7.2021 and to direct the first respondent to register the Power of Attorney for creation of a mortgage, dated



12.7.2021, after collecting the stamp duty payable in respect of the said document under Article 6 of the Schedule-I to the Indian Stamp Act, 1899. The said Writ Petition was allowed after holding that the Registering Authority has arbitrarily declined to adjudicate and register the petition mentioned power of attorney. By the impugned Check Slip, the first appellant refused to register the power of attorney deed on the ground that a proceeding was initiated for collection of deficit stamp duty in relation to the memorandum of understanding entered into between the Writ Petitioner and a third party. The Writ Petitioner represented the Power of attorney before the first respondent, who has admitted the same and register the document. As against the order, the appellant filed a petition for clarification. The issue that was raised and considered by the learned single Judge while allowing the Writ Petition is as to whether the order passed by the first appellant refusing to register the power of attorney deed on the ground stated in the order is legally valid. The learned Single Judge took a view that refusal to register the power of attorney deed citing another document which is pending registration, is not valid. Therefore the petition for clarification filed by the appellant was also dismissed as not necessary. It is in the said circumstances, the above Writ Appeal is filed on the apprehension that the respondent



is now trying to take advantage of the direction passed by the learned Single Judge and to initiate contempt by forcing the Registering Officer to register the mortgage deed which is also in respect of the same property.

4.The learned Additional Advocate General appearing for the appellants submitted that the Registering Officer has no difficulty to register the mortgage deed. However, an endorsement is required to show that the registration of Mortgage deed is subject to the statutory charge in terms of the provisions of Section 33-A of the Stamp Duty Act and Section 2 of the Tamil Nadu Revenue Recovery Act. This Court is unable to accept the said submission of the learned Additional Advocate general .The apprehension of the learned Additional Advocate General is unfair in the sense that mortgage is an independent transaction and the Registering Authority cannot now make endorsement or show any encumbrance relating to the property on the basis of different transaction altogether. Even if Statutory charge is created, that is independent and that can be enforced as against the property. It is admitted that whether the Memorandum of Understanding is to be charged as document granting lease for 50 years is the subject-matter of a different proceedings. The appellant cannot have the



right to precipitate the issue which arose for consideration in an entirely different transaction. Therefore this Court finds no merit in the Writ Appeal.

5. Accordingly, the Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.S.S.R.,J.] [D.B.C.,J.]
10.08.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn



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S.S.SUNDAR, J.

AND

D.BHARATHA CHAKRAVARTHY, J.

vsn

JUDGMENT MADE IN
W.A(MD)NO.1312 OF 2023
and
C.M.P(MD)No.9934 of 2023

10.08.2023