



W.P(MD)No.22469 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.22469 of 2023

P.Parthiban

... Petitioner

Vs

1.The District Registrar,
Nagercoil,
Kanyakumari District.

2.The Sub Registrar,
Kottaram Sub Registrar Office,
Kanyakumari District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned refusal check slip dated 01.09.2023 of the second respondent and quash the same as it is illegal and consequently, direct the second respondent to register the sale deed dated 01.09.2023 of the petitioner in respect of the properties in Survey No. 611/1 to an extent of 242.82 sq.meter, Thenthamaraikulam Village, Agasteeswaram Taluk, Kanyakumari District.



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For Petitioner :Mr.S.Saravana Kumar
For Respondents :Mr.M.Sarangam,
Additional Government Pleader

ORDER

With the consent of both sides, this Writ Petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed as against the order of refusal check slip, dated 01.09.2023.

3.The petitioner is having two shares in the property in Survey No.611/1 in Thenthamaraiikulam Village, Agasteeswaram Taluk, Kanyakumari District and one Harikrishna Perumal is having one share in the said survey number. The petitioner has submitted a document to the second respondent to transfer his two shares to one Murugan. The said document has not been registered based on the objections raised by the said Harikrishna Perumal that it is an undivided property and therefore, it cannot be sold. Since the petitioner is having right of 2/3rd share in the property, the petitioner is having every right to sell his share



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to any third party under the provision of Section 44 of Transfer of Property Act.

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4. Section 44 of the Transfer of Property Act is extracted as under:-

“44.Transfer by one co-owner- Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.”

5. In view of the same, the impugned order passed by the second respondent dated 01.09.2023 is set aside and the writ petition is



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allowed. The second respondent shall register the document with regard to his shares. No costs.

NCC : Yes / No.

Index : Yes / No.

Internet: Yes

am

14.09.2023

To

1.The District Registrar,
Nagercoil,
Kanyakumari District.

2.The Sub Registrar,
Kottaram Sub Registrar Office,
Kanyakumari District.



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B.PUGALENDHI, J.

am

Order made in
W.P(MD)No.22469 of 2023

14.09.2023