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W.A.No.1367 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Writ Appeal No.1367 of 2024
and CMP No.9830 of 2024

Easwari

..Appellant

Vs.

The Sub Registrar
Office of Sub Registrar,
Mulanoor,
Tiruppur District.

.. Respondent

Prayer: Writ Appeals filed under Clause 15 of Letters Patent, to set aside the order dated 10.10.2023 in WP No.29224 of 2023 by allowing this Writ Appeal.

For Appellant : Mr.N.Ponraj

For Respondents : Mr.L.S.M. Hasan Faizal
Special Government Pleader



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J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

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The appellant presented a Sale Deed executed by her on 17.04.2023 for registration before the Sub Registrar, Mulanoor, Tiruppur District on 19.04.2023.

2. The Registrar returned the document refusing registration on the ground that certain orders of attachment passed against the property are in force. This return was challenged by the petitioner in WP No.29224 of 2023. The learned Single Judge, however, dismissed the Writ Petition after referring to Rule 55-A(i) of the Registration Rules, despite his attention being drawn to the judgment of this Court in ***Federal Bank Ltd., v. Sub Registrar***, reported in ***(2023) 2 CTC 289***, wherein Rule 55-A(i) was struck down as unconstitutional.

3. Rule 55-A(i) of the Registration Rules enables the Registrar to refuse registration where there are encumbrances like mortgage, orders on attachment of property, sale agreement or lease agreement existing over the property. This provision was specifically held to be unconstitutional, in view



of the fact that the runs counter to the substantive law viz. the Transfer of Property Act.

4. This Court while deciding that issue in ***Federal Bank Ltd., v. Sub Registrar***, has after referring to various provisions of the Transfer of Property Act, which is the substantive law dealing with transfer of immovable property and a Central enactment held that the provisions of Section 55-A(i) are contrary or inconsistent with the provisions of the substantive law. We are in respectful agreement with the conclusions expressed by the learned Single Judge in ***Federal Bank Ltd., v. Sub Registrar***, referred to *supra*.

5. The right to own property and the right to deal with property are constitutional rights protected under Article 300-A of the Constitution of India. Rule 55-A(i) clearly and directly invades upon such a right and empowers a Sub Registrar, who is not even a Judicial Authority to tamper with the right to property by a subordinate legislation. Courts will have to frown upon such an attempt by the legislature to invade upon a Constitutional right through a Subordinate legislation which has been rightly



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done by the learned Single Judge in ***Federal Bank Ltd., v. Sub Registrar.***

We are therefore of the view that the learned Single Judge, who decided the Writ Petition fell in error in concluding that the dictum in ***Federal Bank Ltd.,*** will have to be confined to that case alone, we are therefore unable to uphold the judgment of the learned Single Judge impugned in this Appeal.

6. In view of the above, the Writ Appeal is allowed, the order of the learned Single Judge is set aside, the return memo of the Sub Registrar is also set aside. There will be a direction to the Sub Registrar to register the document within 15 days from the date of presentation of the document for registration. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
12.06.2024

Index: No
Internet: Yes
Speaking order
Neutral Citation: No
jv



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To

The Sub Registrar
Office of Sub Registrar,
Mulanoor,
Tiruppur District.



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R.SUBRAMANIAN, J.

and

R.SAKTHIVEL, J.

(jv)

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