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W.P.No.10005 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.10005 of 2023

G.Bhavani

... Petitioner

Vs.

1.The Sub-Registrar,
Sulagiri Sub-Registrar Office,
Krishnagiri District.

2.N.Manjula

3.N.Pazhanisamy

4.C.Andiyappan

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 10.03.2023 made in RFL/Sulagiri/30/2023 on the file of the 1st respondent and quash the same and consequently direct the first respondent to register the sale deed dated 10.03.2023 submitted by the petitioner comprised in S.Nos.105/5D2 0.25 cents and 105/6B1 - 0.49 cents, in total 0.74 cents, situated at Dhoripalli Village, Sulagiri Taluk, Krishnagiri District to the 4th respondent within the time stipulated by this Court.

For Petitioner : Mr.S.Vijayakumar



WEB COPY



W.P.No.10005 of 2023

For Respondents : Mr.B.Vijay, AGP for R1
Mr.K.Suresh for R2 & R3
No appearance for R4

ORDER

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 10.03.2023 made in RFL/Sulagiri/30/2023 on the file of the 1st respondent and quash the same and consequently direct the first respondent to register the sale deed dated 10.03.2023 submitted by the petitioner comprised in S.Nos.105/5D2 0.25 cents and 105/6B1 - 0.49 cents, in total 0.74 cents, situated at Dhoripalli Village, Sulagiri Taluk, Krishnagiri District to the 4th respondent within the time stipulated by this Court.

2. Heard Mr.S.Vijayakumar, learned counsel for the petitioner, Mr.B.Vijay, learned Additional Government Pleader for the first respondent and Mr.K.Suresh, learned counsel for R2 & R3.



W.P.No.10005 of 2023

3. The impugned order has been passed mainly on the ground that since the agreement for sale was already registered, the property cannot be dealt later. This aspect has already been dealt by this Court in the case of ***N.Ramayee v Sub-Registrar [(2020) 6 CTC 697]***. In the said judgment, this Court has held as follows:

"18. Conspectus of the various provisions referred above make it clear that the Registering Officer cannot go into the title of the property in respect of which document is presented. However, under various provisions he has power to refuse to accept the document for registration unless mistakes found in the document are set right properly. Except Section 22-A of the Tamil Nadu Act, other provisions referred above do not give any power to the registering officer to refuse to register the document presented by the person executing documents. Rule 60 also states that the registering officer can only enquire about the executant and the claimant of the instrument of sale regarding whose identity he has to satisfy himself. But the provisions does not give absolute power to refuse registration. As already indicated above, the purpose and object of the Act is to give a public notice about any encumbrance in



WEB COPY



W.P.No.10005 of 2023

the immovable property.

19. It is also relevant to note that even when the document is undervalued and the Registrar registering the document has reason to believe that the market value of the property has not been truly set out in the document, he has to receive the document and refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon as per Section 47-A of the Stamp Act. Even on such ground also the Registrar has no right to refuse to register the document.

20. In the light of the above when we deal with the various provisions of the Transfer of Property Act the question arises as to whether the transfer is restricted to one time in respect of the immovable property, unless the previous transfer or any agreement is set aside in the court of law, and other transfer is permissible? The answer is absolutely "No" for the following reasons: The property of any kind may be transferred, except as otherwise provided by the transfer of property Act or by any other law for the time being, as provided in Section 6 of the Transfer of property Act.

21. Every person competent to contract and



WEB COPY



W.P.No.10005 of 2023

entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force, as per Section 7 of the Transfer of Property Act. The reading of the above section makes it very clear that even a person not entitled transferable property is competent to transfer such property when he was authorised to dispose of such property.

22. Section 41 of the Transfer of Property Act deals with the power of the ostensible owner to effect the transfer of the property with consent, express or implied of the real owner.

23. From the principle underlined in the Section 41 of the Transfer of Property Act is that the ostensible owner of the property, with the consent express or implied and representing himself as owner of the property though he is not having the title, can deal with the property. Similarly, Section 42 of the T.P. Act deals with the transfer by a person having authority to revoke the former transfer. When a person transfers any immovable property reserving power to revoke the



WEB COPY



W.P.No.10005 of 2023

transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee subject to any condition attached to the exercise of the power as a revocation of the former transfer to the extent of the power.

24. Similarly section 43 of Transfer of Property Act deals with transfer by unauthorised person who subsequently acquires interest in the property transferred. The above section makes it very clear that even a person who has no title over the property purports to transfer to another by deed and when he subsequently acquires any interest in the property, sufficient to satisfy the transfer, the title would pass to the transferee without any further act on the part of the transferor; provided the transferee has not rescinded the transfer and opts for such effectuation. The above principle also makes it very clear even a transfer by unauthorised person is not prohibited. Only the validity of the title would be subject to his acquiring subsequent interest in the property.

25. Section 48 of the Transfer of Property Act deals with priority of rights created by transfer, which reads as follows:



WEB COPY



W.P.No.10005 of 2023

"48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created."

26. The above section determines the priority when there are successive transfers, where the person creates transfer at different times right in or over the same immovable property, such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation bind the earlier transferee and be subject to the rights previously created. "

4. This judgment is also affirmed by the Hon'ble Supreme Court. In such view of the matter, the order passed by the first respondent is liable to be quashed.



W.P.No.10005 of 2023

5. With the above observations, this Writ Petition is allowed and the impugned order made in RFL/Sulagiri/30/2023 on the file of the 1st respondent dated 10.03.2023 is quashed. The first respondent is directed to register the document within a period of one month from the date of receipt of a copy of this order. No costs.

Index : Yes /No

23.04.2024

Speaking / Non-speaking

Neutral Citation : Yes / No

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W.P.No.10005 of 2023

WEB COPY

To

The Sub-Registrar,
Sulagiri Sub-Registrar Office,
Krishnagiri District.



WEB COPY



W.P.No.10005 of 2023

N.SATHISH KUMAR, J.

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W.P.No.10005 of 2023

23.04.2024