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W.P.No.11260 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05..06..2024

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.11260 of 2024

R.Marimuthu

..... Petitioner

-Versus-

The Sub Registrar,
Namagiripettai,
Rasipuram Taluk.

..... Respondent

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in Refusal No.RFL/Namagiripettai/37/2024 dated 13.03.2024 and to quash the same and thereby direct the respondent to register the sale deed dated 13.03.2024 presented by the petitioner in respect of the property in S.No.670/2 (item No.1 – S.No.670/2B – 1.59 Acres out of 0.80.0 Hectares and Item No.2 – S.No.670/2A – 5 cents out of 0.94.50 Hectares) at Karkoodalpatti Bit 1 village, Rasipuram Taluk and thereby release the document forthwith.

For Petitioner : *Mr.N.Suresh*

For Respondent : *Mr.P.Anandha Kumar,*
Government Advocate



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ORDER

This writ petition has been filed challenging the refusal check slip issued by the respondent in Refusal No.RFL/Namagiripettai/37/2024 dated 13.03.2024 on the grounds that (i) no objection certificate was not obtained and (ii) copy of judgement to prove the title over the subject property has not been produced.

2. It is the case of the petitioner that he, Ravichandran and Ramesh jointly purchased a landed property in S.No.670/2 (item No.1 comprised in S.NO.670/2B – 1.59 Acres out of 0.80.0 Hectares and, Item No.2 S.NO.670/2A – 5 cents out of 0.94.5 Hectares) at Karkoodalpatti Bit 1 Village, Rasipuram Taluk for a valuable consideration. The subject property was originally owned by one Arasan Servai who got the same in a family partition on 15.12.1976 through registered partition deed vide Doc.No.795/1976 on the file of the Sub Registrar, Namagiripettai and the B-Schedule property covered under the partition deed was the property actually allotted to the said Arasan Servai. The said Arasan Servai died on 07.12.2021 leaving behind his legal heirs Sangumani (wife) and others. The said Arasan Servai was in possession and enjoyment of the property until his death. When he along with the other purchasers presented they sale deed on 13.03.2024 before the respondent for



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registration, it was refused to be registered on the grounds (i) that no objection certificate was not obtained in respect of one Perumal Gounder in whose favour Arasan Servai had created a mortgage which was registered under Doc.No.1053/1997 and that judgement copy in S.A.No.1681 of 2008 was not produced. The grievance of the petitioner is that refusal to register the document on the ground of non-obtainment of no objection certificate is concerned, such objection is totally bad in law. Hence, this writ petition.

3. Heard both sides.

4. As far as refusal slip in respect of encumbrance in respect of mortgage created over the subject property is concerned, in the case of **N.Ramayee v Sub-Registrar** [(2020) 6 CTC 697], a Division Bench of this court has elaborately dealt with the power of the registering authority to refuse to register a document. The Division Bench of this Court has held as under:-

“29. Section 56 of the Transfer of Property Act deals with marshalling by subsequent purchaser. The above provision also makes it clear that when the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is in the absence of a contract to the contrary, entitled to have the mortgage- debt satisfied out of the property or properties not sold to him, so far



as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties. The above provision also makes it clear that though there were mortgages already created there is no bar for subsequent transfer of the property. But subsequent transfer is subject to the mortgage earlier created.”

5. It would be very useful to note here that when the judgement in **Ramayee's case** was taken up on appeal by the State in SLP (C) NO.4844 of 2021, the Hon'ble Supreme Court by its order dated 05.04.2021 dismissed the Special Leave Petition and confirmed the order of the Division Bench of this Court.

6. In view of the settled position of law, refusal slip issued by the registering authority on the said ground is concerned cannot be sustained in the eye of law.

7. Coming to the other ground viz., non production of a copy of judgement in the second appeal is concerned, the learned counsel for the petitioner submits that petitioner would produce a copy of the judgement before the registering authority.



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8. In view of the above discussions and the submission made by the learned counsel for the petitioner, on production of a certified copy of the judgement in S.A.No.1681 of 2008 on the file of this court, the respondent-Sub Registrar shall register the document within a period of ten days from the date of production copy of judgement in the second appeal along with a copy of this order.

In the result, the refusal check slip issued by the respondent is set aside accordingly. The writ petition is allowed with the above directions. No costs.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

1.The Sub Registrar, Namagiripettai, Rasipuram Taluk.



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N.SATHISH KUMAR.J.,

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