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W.P.No.11611 of 2024



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 25.04.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**W.P.No.11611 of 2024**  
**and W.M.P.No.12706 of 2024**

L.S.Harish

...

Petitioner

*versus*

1.The Inspector General of Registration,  
Office of the Inspector General of Registration,  
Santhome High Road,  
Chennai - 600 009.

2.The Sub-Registrar,  
Gandhipuram,  
Coimbatore District.

3.Harpreet Singh Anand

4.Sunny Chungath

...

Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned refusal check slip issued by the 2<sup>nd</sup> respondent in RFL/Gandhipuram/25/2024 dated 16.04.2024, quash the same and consequently, direct the 2<sup>nd</sup> respondent to admit the execution, register the Sale Deed dated 10.04.2024 executed in favour of the petitioner and release the document after registration.



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For Petitioner : Mr.R.Bharath Kumar  
For Respondent Nos.1 & 2 : Mr.B.Vijay  
Additional Government Pleader

**ORDER**

By consent of both sides, this Writ Petition is disposed of at the stage of admission itself.

2. This Writ Petition has been filed challenging the refusal check slip dated 16.04.2024 issued by the second respondent whereby he refused to register the Sale Deed presented by the petitioner for registration.

3. The registration is refused mainly on the ground that the mortgage deed was also registered. It is the contention of the petitioner that mortgagee also given no objection, despite the same the document has not been registered.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 and 2.



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5. I have perused the entire records. A Division Bench of this Court in ***N.Ramayee Vs. Sub-Registrar [(2020) 6 CTC 697]***, has held as follows:-

*“38. 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.*

*39. Section 57 of the Transfer of Property Act deals with the Provision by Court for encumbrances and sale freed therefrom. The Section also makes it clear that even the properties already encumbered can be brought under court sale and the encumbrance can be freed after issuance of notice to the encumberer.*



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*40. It is also relevant to note that even a mortgage is a transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. Therefore, it cannot be said that once the encumbrance is made by creating a mortgage, the mortgagor is totally prohibited from effecting any further transfer. In fact if any such transfer is made, it is always subject to the mortgage alone. If the analogy is drawn from the judgement of the single judge in W.P.No.33601 of 2019 [Venkattamma vs. The Sub-Registrar and another] that agreement once registered there cannot be any subsequent settlement deed is accepted, such situation even may lead to the contention that even where a simple mortgage is created, the mortgagor cannot transfer the property for any other purpose even for a lease, even though lease is just transfer of right to enjoy the property. The judgement of the learned single Judge in W.P.No.33601 of 2019 [Venkattamma vs. The Sub-Registrar and another] holding that unless there is declaration declaring the agreement for sale is null and void is obtained from civil court no further transfer could be registered, which is, in our view, not according to law. It is also to be noted that in the above case only agreement for sale was registered. It is relevant to extract Section 54 of the Transfer of Property Act*



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54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made.—3Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."

It has to be noted here that when the judgement in **Ramayee's case** was taken up on appeal by the State in SLP (C) No.4844 of 201, 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. When the Division Bench of this Court has already gone into various provisions in the Transfer of Property Act, more particularly, the provision relating to the powers of the Registering authority to refuse registration of certain documents, ignoring the law laid down by the Division Bench of this Court in ***Ramayee's case***, refusal check slips are issued often by the registering authority across the State simply citing the circular orders which have got no statutory backing. The Registration Department cannot ignore the law laid down by this court and as confirmed by the Hon'ble Supreme Court merely relying upon the circular orders issued by the Inspector General of Registration.

7. It is held that a mere pendency of the mortgage is not a bar for transferring the property. Hence, the same cannot be a ground to refuse to register the document. In such view of the matter, the impugned order of refusal check slip issued by the second respondent is liable to be set aside.

8. In the result, this Writ Petition is allowed and the impugned order of refusal slip dated 16.04.2024 is set aside and the second respondent is directed to register the Sale Deed presented by the petitioner for



registration, if it is otherwise in order, as per law, within a period of 15 days

from the date of receipt of a copy of this order. No costs. Consequently,

connected Miscellaneous Petition is closed.

**25.04.2024**

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri

**Note: Issue order copy on or before 26.04.2024**

To

1.The Inspector General of Registration,  
Office of the Inspector General of Registration,  
Santhome High Road,  
Chennai - 600 009.

2.The Sub-Registrar,  
Gandhipuram,  
Coimbatore District.



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**N.SATHISH KUMAR, J.**

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