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W.P. No.12818 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P. No.12818 of 2024

Pradeep Kumar

. . Petitioner

Vs

The Sub Registrar
Sub Registrar Office
Tharamangalam
Salem District

. . Respondent

PRAYER : Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the 1st respondent in relation to refusal number RFL/Tharamangalam/4/2024 dated 21.03.2024 and quash the same in the light of judgment in Ananthi Vs District Registrar, Vellore District and another in 2023 1 CWC 533 and direct the 1st respondent to register the settlement deed.

For Petitioner : Mr.J.Franklin

For Respondents : Mr.P.Anandhakumar,
Government Advocate

ORDER



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Challenge has been made to the refusal check-slip issued by the respondent in RFL/Tharamangalam/4/2024 dated 21.03.2024, quash the same and for a direction to the respondent to register the settlement deed presented by the petitioner.

2. The refusal slip has been issued by the respondent solely on the ground that original document has not been produced. Challenging the same, this writ petition is filed.

3. The learned Government Advocate appearing for the respondent fairly submitted that the refusal slip issued by the respondent is not according to law and they will comply the Order within the time stipulated by this Court.

4. Heard both sides and perused the materials placed on record.

5. This court in ***Subrmani vs. The Sub Registrar, Rasipuram in W.P. No.11056 of 2024 dated 26.04.2024*** has elaborately held as follows:

31. Now, this Court has to point out settled position of law in various aspects. With regard to the refusal slips issued



on the ground of

a. failure to produce chitta, adangal, FMB sketch, patta is concerned, this Court in the case of The Trust for Education and Rehabilitation of Disabled Orphans and Destitutes represented by its Managing Trustee v. The Inspector General of Registration, Chennai reported in 2002 (1) MLJ 244 has held that Sub~Registrar cannot refuse registration on the ground that the document is not accompanied by a Chitta, Adangal or FMB sketch etc. Similarly, in the case of Jesupalam vs Registrar reported in 2015 SCC Online Mad 7660, it was held that the Sub~Registrar cannot refuse registration on the ground that the document is not accompanied by a Chitta, Adangal or FMB sketch etc. Therefore, when the Constitutional Courts interpreted the provisions of the Registration Act and laid a law, wherein, the Inspector General of Registration is also a party, issuing the circular contrary to the above judgment to produce patta, chitta, adangal cannot be sustained in the eye of law.

b. refusal on the ground of title dispute, in a judgment of this Court in the case of Abdullasa v Inspector General of Registration reported in 2021 2 CWC 451, this Court held that the Registrar cannot refuse to register the document on the basis of objections raised by a rival claimant, who has a different source of title. Similarly, the Hon-ble Apex Court in the case of Satya Pal Anand v. State of M.P., reported in (2016) 10 SCC 767 has held that an enquiry into the title of



the executant is beyond the powers of the Sub~Registrar. Therefore, in view of the law declared in this regard, merely on the ground of protest petitions and objections raised by some third party, the document cannot be refused to be registered.

c. With regard to the refusal on the absence of parent document, this Court in the case of K.S. Vijayendran v. The Inspector General of Registration reported in (2011) 2 LW 648, Lakshmi Ammal v. The Sub Registrar, Villivakkam reported in 2015 SCC OnLine Mad 5868 and C. Moorthy v. Sub Registrar Aruppukottai reported in 2018 SCC OnLine Mad 3898, it was held that absence of a parent document is no ground to refuse registration. Pursuant to these judgments, sub~rule XX was introduced in Rule 162 authorizing the Sub~Registrar to refuse registration for non~production of the original title deed as required by Rule 55~A. This Court in the case of Federal Bank v Sub~Registrar, reported in 2023 2 CTC 289 has held that Sub~Rule XX of Rule 162 has no statutory backing. The said order has been followed by a Division Bench of this Court in the case of M. Ariyanatchi v Inspector General made in W.A.(MD).No. 856 of 2023, dated 27.06.2023, wherein, Division Bench of this Court has held that, for instance, the original document is held by one co~owner, the Sub~Registrar can always take an undertaking or a declaration in the form of an affidavit from the vendors to the effect that the original document is with the said person



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and register the document. Hence, the Sub~Registrar cannot refuse to register a document merely because the original parent deed has not been produced.

Considering the above settled position of law, the Registrar cannot refuse to register the document merely on the ground of non production of parent document.

d. As far as the refusal based on the letters from the police is concerned, this Court in the case of R. Madhupriya v Inspector General of Registration reported in 2020 SCC Online Mad 20112 has held that the practice of police officers issuing letters to the Sub~Registrar?s asking them to refrain from registering documents has been consistently deprecated. In such cases, it is for the aggrieved party to obtain appropriate orders from the civil court instead of using the police machinery to prevent the Registrar from performing his statutory functions. Such view of the matter, merely on the basis of some communication from the police officials, the Registrar has no power to refuse the registration.

e. As far as the refusal based on the existence of mortgage, it is now settled that once the encumbrance is made by creating a mortgage, the mortgagor is not prohibited from effecting any further transfer. Section 56 of Transfer of Property Act, 1882 deals with the marshalling by subsequent



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*purchaser. The Division Bench of this Court in the case of **N. Ramayee v Sub-Registrar, reported in (2020) 6 CTC 697**, in paragraphs 29 & 30 has held as follows:*

"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.

30. 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



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sale and the encumbrance can be freed after issuance of notice to the encumberer.?"

That apart, the first proviso to Rule 55-A of the T.N Registration Rules, 2000 had inserted which authorises the registrar to refuse the document until the limitation period for redeeming the mortgage has expired. This Court in the case of Federal Bank v Sub~Registrar, reported in 2023 2 CTC 289, has already declared the first proviso to Section 55-A as ultravires the powers under the Act, as it runs counter to the substantive provisions of law viz., Sections 48 and 56 of the Transfer of Property Act. When the Rule under the Registration Act cannot override the statutory provisions of the Transfer of Property, it is not open to the Sub~Registrar to refuse registration citing the existence of a mortgage or lease since the Transfer of Property, which is the substantive law permits such transfer despite the earlier mortgage is created and lease is executed.

Therefore, any Rule inserted to undo the law declared by this Court without any statutory backing cannot be sustained in the eye of law.

f. Now, there are instances that Sub~Registrar is simply refusing to register the document on the ground that the property has been undervalued. It is relevant to note that when the document is not valued properly, in N.Ramayee's



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case (cited supra), in paragraph 19 has held as follows:

"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.?"

Therefore, the refusal of registration on the ground of undervaluation cannot be valid in the eye of law. "

g. Similarly, No objection sought to be obtained when the lease is in existence in respect of the immovable properties. The said issue is also elaborately dealt by the Division Bench of this Court in N.Ramayee's case, wherein, in paragraph 38, it is held as follows:

?38. It is also brought to our notice about the new circular in No. 24011/C1/2020 dated 08.10.2020. It is the contention of the learned Additional Advocate General that the Registrar has power to regulate the registration in order to prevent fraud and hence, the Registrar is having powers under the Registration Act to regulate the registration and the



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right to refuse the document and that such power is available under Section 71 of the Registration Act. Such contention is not acceptable for the simple reason that the circular bars transfer of property on the ground that when a lease is already executed in respect of the property, without expiry of the lease, transfer cannot be permitted or without consent of lessee no registration is permissible. Further, insisting a no objection from mortgagee before registration is also against the very substantive provision of law. If any property is sold with existing mortgage, the transferee steps into the shoes of mortgagor. He has the right to redeem the property by paying the mortgage money. Therefore in the name of regulating the registration, any circular which is in the nature of violating the substantive provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law. If the contention of learned Advocate General that without seeking declaration and cancellation of the agreement of sale, subsequent agreement or transaction cannot be registered, is accepted then such restriction, in fact, infringes the very Constitutional right of the citizen provided under Article 300 A of the Constitution.?

Therefore, requiring no objection is not at all warranted for registering the document with existing lease.

h. As far as the refusal of registration of Court decrees



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outside the time limit presentation under Section 23 is concerned, this Court in the case of Sathiyamoorthy v Sub~Registrar reported in (2023) 4 CTC 287 condemned the practice of the Sub~Registrar in citing the provisions of Section 23 of the Registration Act holding that a circular in Na.Ka. No.34930/C1/2019, dated 27.2.2023, was eventually brought out in light of this decision holding that the time limit under Section 23 would not apply to a Court decree. Therefore, the refusal on the ground of delay in respect of registering Court decree cannot be sustained in the eye of law.

i. With regard to the attachment made by some department when the sale certificate issued under SARFAESI Act, 2002 is concerned, it is well settled that a Full Bench of this Court in the case of Assistant Commissioner (CT) v. I. O. B. reported in (Mad)[FB], 2017 1 MLJ 769 and two Division Benches in the case of Tamil Nadu Mercantile Bank Limited v. The Joint~I Sub Registrar Office, Madurai reported in [2021] 1 WLR 462 (DB) and State Bank of India v Sub Registrar, reported in 2023 SCC Online Mad 3179 (DB), have already held that the auction purchaser would get the property free from all encumbrances which includes the claim of any statutory authority like the Commercial Taxes Department. Such view of the matter, when the sale certificate sought to be registered, any attachment existing will have no significance. On that ground also, the document cannot be refused to be



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registered.

j. The other ground on which refusal is also made casually is citing the pendency of the suit. The said issue is also elaborately dealt by the Division Bench of this Court in N.Ramayee-s case, wherein, in paragraph 28, it is held as follows:

28. It is also pertinent to note that even if transfer is made during a pending suit, such transfer is not void but is subject to the result of the suit. Section 53 of the Transfer of Property Act, deals with fraudulent transfer. Even such fraudulent transfer is made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Even in such cases the rights of transferee in good faith and for consideration is protected.?

Therefore, mere citing the pendency of the suit also the document cannot be registered.

6. Following the above decision, this writ petition is allowed. The order of the Sub Registrar, Tharamangalam dated 21.03.2024 impugned in this writ petition is set aside. There shall be a direction to the Sub Registrar, Tharamangalam, Salem District, to register the settlement deed presented by the petitioner, within a period of one month from the date of receipt of a copy of this order. No costs.



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Index : Yes / No
Speaking/non speaking order
Neutral Citation : Yes/No
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To

- 1.The Sub Registrar
Sub Registrar Office
Tharamangalam
Salem District
- 2.The Government Pleader
High Court, Madras

N. SATHISH KUMAR, J.

Asr



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