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W.P.No.18191 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01..07..2024

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Writ Petition No.18191 of 2023

1.Jothisubramaniam

2.R.Periyasamy

..... Petitioners

-Versus-

1.The Sub Registrar,  
Department of Registration,  
Perundurai, Erode District.

2.Rathinammal

3.Parimaladevi

4.Sivakumar

5.Rukkyammal @ Rukkumani

..... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 1<sup>st</sup> respondent to delete the entry in the encumbrance register maintained by the 1<sup>st</sup> respondent with respect to the mortgage deed dated 28.05.1982 bearing Doc.No.2472/1982 executed by Sengoda Gounder in favour of the 5<sup>th</sup> respondent reflected in encumbrance





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3. It is the case of the petitioners that one Sengoda Gounder executed a registered gift settlement deed vide Doc.No.1474/1990 on the file of the office of the Sub Registrar, Perundurai, Erode District, in respect of land measuring an extent of 2.21.5 Hectares comprised in Old S.No.126/2, New Re-survey No.153/1 in favour of his daughter Rathinammal, the 2<sup>nd</sup> respondent herein who in turn, along with her two children Parimaladevi and Sivakumar, the respondents 3 and 4 herein sold the property which is the subject matter in Sale Deed vide Doc.Nos.806/1999 and 807/1999 dated 12.04.1999. There was a mortgage created in respect of the subject property in favour of the 5<sup>th</sup> respondent and though mortgage amount with interest had been paid to the 5<sup>th</sup> respondent by the 2<sup>nd</sup> respondent, discharge of debt was not registered at the office of the 1<sup>st</sup> respondent. In the meantime, the subject property was sold to the petitioners. The original mortgage deed is not available. The 2<sup>nd</sup> respondent however, handed over the original mortgage discharge receipt dated 01.04.1997 to the petitioners. Even though a representation was made to the 1<sup>st</sup> respondent to delete the encumbrance with respect of the mortgage created earlier, there is no response. Hence, the present writ petition.

4. Heard both sides.



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5. The learned counsel appearing for the respondents 2 to 5 would submit that the entire dues, in connection with which the land was mortgaged, was paid off in 1997 itself and, on instructions, from the 5<sup>th</sup> respondent, he would submit that the 5<sup>th</sup> respondent admitted the execution of mortgage discharge receipt and a photocopy of the same is found at Page 28 in the typed set of papers.

6. It is needless to state that there is no provision in the Registration Act, 1908 or the rules made thereunder to delete an entry relating to mortgage created in respect of an immovable property. The very purpose of making entry of a transaction in the encumbrance register is to disclose the nature of transaction in respect of an immovable property comprised in a particular survey number. Therefore, no directions as prayed for in the writ petition could be granted.

7. When the 5<sup>th</sup> respondent herself has got no quarrel with regard to repayment of mortgage amount under discharge of receipt dated 01.04.1997 though it was not registered and no suit for foreclosure or redemption whatsoever was filed, this court is of the view that there would not be any impediment for the petitioners to deal with the subject property as they wish and mere encumbrance with regard to mortgage created by the 2<sup>nd</sup> respondent



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(the vendor of the petitioners) in favour of the 5<sup>th</sup> respondent herein will not be a bar for subsequent transaction in respect of the subject property.

In the result, this writ petition is disposed of with the above observations.

No costs.

Index : yes / no  
Neutral Citation : yes / no  
Speaking / Non Speaking Order  
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01..07 ..2024

To

1.The Sub Registrar,  
Department of Registration,  
Perundurai, Erode District.



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N.SATHISH KUMAR.J.,

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