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W.A.No.1779 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.A.No.1779 of 2024

Udayalakshmi

...Appellant

Vs.

1.The District Registrar,
Chengalpattu District,
Chengalpattu.

2.The Sub-Registrar,
Thiruporur Sub-Registrar Office,
Chengalpattu District.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 26.03.2024 made in W.P.No.6520 of 2024 by allowing this writ appeal.

For Appellant : Mr.R.Vinoth Kumar
For Respondents : L.S.M.Hasan Faizal,
Additional Government Pleader



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J U D G M E N T

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(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

The appellant is aggrieved by the dismissal of the writ petition with the following 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 Refusal Check Slip in FEF/Thiruporur/8/2024 dated 02.03.2024 on teh file of the Joint Sub Registrar II, Dindigul, the respondent No.2 to receive and register the Sale Deed dated 02.03.2024 presented by the petitioner in favour of Ayisha W/o Shahul Hameed in respect of the property, being land in New Natham Survey No.255/8, Old Natham Survey No.109/1A, Thiruporur Village, Thiruporur Taluk, Chengalpattu District to an Extent of 9 ½ Cents, within a time frame as may be fixed by this Court.

2. The challenge in the writ petition was to the Refusal Check Slip issued by the Sub-Registrar, Thiruporur dated 02.03.2024, which reads as follows:-



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Reason of Refusal:

1. *Others:* சாத்தூர் நீதிமன்ற அசல் வழக்கு எண் 67/2023

நிலுவையில் உள்ளதால் நீதிமன்ற ஆணைபெற்று ஆவணத்தை பதிவுக்கு
தாக்கல் செய்யுமாறு பதிவு மறுத்தளிக்கப்படுகிறது.

3. The learned Single Judge has dismissed the writ petition on the ground that since a suit is pending and the Sub-Registrar has been impleaded as a party to the suit he was justified in rejecting the document presented for registration.

4. We are unable to subscribe to the view of the learned Single Judge. Section 52 of the Transfer of Property Act 1882 which deals with the doctrine of '*lis pendens*' reads as follows:

52. Transfer of property pending suit relating thereto.—

During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be



transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

5. It is the settled position of law that pendency of a suit does not *ipso facto* bar alienation of property. The effect of Section 52 is that any alienation of property made during the pendency of a suit in which right to immovable property is directly and specifically in question, such alienation would be subject to the result of the suit.



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6. Therefore, a person who claims right to an immovable property is free to alienate it even during the pendency of the suit, unless there is a prohibitory order of injunction passed by a competent Court, restraining him from alienating the property. The well settled position of law in respect of purchase of immovable property viz., '*caveat emptor*' (buyer beware) applies to all the transactions. If the purchaser who is aware of the pending litigation is willing to take a risk and purchase the property, the registering Authorities cannot refuse to register the document on the ground that a suit is pending and the registering Authority has been made a party to the suit. The addition of the registering Authority as a party to the suit does not in any way alter the situation in law. Once it is conceded that there is no prohibitive injunction restraining the transferor from dealing with the property, the Sub-Registrar cannot refuse to register the document on the ground that the suit is pending.

7. Hence, we are convinced that the order of the learned Single Judge as well as the order of the Sub-Registrar, Thiruporur dated 02.03.2024 are liable to be set aside and they are accordingly set aside. The writ appeal



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stands **allowed** and W.P.No.1155 of 2022 also stands allowed. There will be a direction to the Sub-Registrar to register the instrument, if it is presented for registration, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs.

(R.S.M., J.) (R.S.V., J.)
08.07.2024

dsa
Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order



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To:-

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- 1.The District Registrar,
Chengalpattu District,
Chengalpattu.
- 2.The Sub-Registrar,
Thiruporur Sub-Registrar Office,
Chengalpattu District.



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R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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