



WP.No.16086 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

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THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.16086 of 2024

WMP.No.17599 of 2024

K.Samundeeswari

.. Petitioner

Versus

1. The District Registrar,
The District Registrar Office, Namakkal District.

2. The Sub Registrar,
Sub Registrar Office,
Senthamangalam, Namakkal District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Refusal Check Slip in refusal number RFL / Senthamangalam / 28 / 2024 dated 07.03.2024 issued by the second respondent and to quash the same as illegal incompetent and ultravires and consequently direct the second respondent to register the Settlement deed dated 01.03.2024 executed by the petitioner.

For Petitioner : Mr.T.Balaji

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader



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ORDER

With the consent of both sides, this Writ Petition is taken up for final disposal at the admission stage itself.

2. Challenging the refusal slip issued issued by the second respondent dated 07.03.2024 refusing to register the Settlement Deed presented by the petitioner, the present Writ Petition has been filed.

3. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

4. It is the case of the writ petitioner that the subject property is an ancestral property of the father of the petitioner and the petitioner is entitled to 1/3rd share in the property. It is the grievance of the petitioner that when she presented a settlement deed settling her 1/3rd share in the property to her husband, the second respondent had refused to register the same on the ground that there is an Order of attachment in O.S.No.1637 of 2002. Challenging the same, the present Writ Petition has been filed.



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26. It is relevant to note that there are some instances noticed by this Court where the attachment in a money suit relating to the year 1998 for a sum of Rs.20,000/-. When the document was presented in the year 2004, the same has been refused mainly on the ground that attachment has not raised. It is relevant to note that Section 64 of CPC makes it clear that any private alienation after attachment is void as against all claims enforceable under the attachment. The Hon'ble Supreme Court in the case of *M. Marathachalam Pillai v. Padmavathi*

Annal reported in (1971) 3 SCC 878 has held that the sale is



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only void against all other claims enforceable under the attachment and it is not void generally. Therefore, this Court is of the view that merely on the basis of some attachment reflected in the encumbrance, it is the duty of the registering authorities to make summary enquiry as to the nature of the claims under the attachment. For example, if the attachment is for a sum of few lakhs of rupees over several crores of properties, it cannot be said that owner of the property cannot deal with the property forever. If such interpretation is given, in fact, it will take away the constitutional right of a person to hold the property. If the attachment is for a fewer amount and the value of the property is more, the document can be registered with the entry that the attachment prevail over against all the claims enforceable under the attachment so that subsequent purchaser will be put on notice.

27. Similarly, a Division Bench of this Court in the case of *K. Balachandran v A.M MuthyyanMudaliar* reported in (1974) 87 LW 812, held as follows:

“It is abundantly clear that neither S. 64 of the Code nor the corresponding provision in the earlier enactments made private alienation void for all purposes. S. 64 specifically says that the transaction is void only as against all claims enforceable under the attachment. As pointed out in the first of the cases quoted above a private alienation when an attachment is in force is, not void against the whole world.”



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Hence, it is relevant to note that even while enacting the provision under section 22B, similar provision with regard to transfer after attachment available in Civil Procedure Code has not been taken note of. Section 64 of CPC deals with transfer of property after attachment by Court. The said provision also makes it very clear that sale is void only against the claims enforceable under the attachment. Therefore, the sale cannot be void in its entirety. In this case, the attachment is of the year 2002 and the Execution Proceedings ought to have been completed within a period of 12 years. In that case, execution proceedings should have been completed 2014 itself. Therefore, mere entry in the Encumbrance Certificate cannot be a ground to deny the right of the owner to deal with the property. In such view of the matter, the impugned Order is liable to be quashed. Even if the attachment is still continuing, the sale is valid only to the extent of claim enforceable under attachment and not in entirety.

6. Accordingly, this Writ Petition is allowed and the impugned Order passed by the respondent dated 07.03.2024 is quashed and the respondent is directed to register the settlement deed dated 01.03.2024 presented by the petitioner within a period of fifteen days from the date of



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receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petition is closed.

24.06.2024

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Note : Issue Order copy on 28.06.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

To

1. The District Registrar,
The District Registrar Office, Namakkal District.
2. The Sub Registrar,
Sub Registrar Office,
Senthamangalam, Namakkal District.



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N. SATHISH KUMAR, J.

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