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W.P.No.18408 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.18408 of 2024
WMP.No.20217 of 2024

1.Madaevamma

2.Rajamma

3.Manjula

4.Madevachetty

...

Petitioners

vs

The District Registrar
Gobichettipalayam
Erode District.

2.The Sub Registrar
Thalavadi, Erode.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to refusal check slip No.RFL/Thalavadi/13/2024 dated 22.05.2024 and quash the same and further direct the 2nd respondent to register the partition deed dated 22.05.2024 presented by the petitioners within a stipulated period as fixed by this Court.

For Petitioners : Mr.S.Parthasarathy
For Respondents : Mr.M.Shajahan,
Spl.GP for R1 & R2



ORDER

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

2. The case of the petitioners is that the petitioners are brothers and sisters and they are the absolute owners of the property in New S.No.85, Old S.No.164/1, measuring to an extent of 2.20.5 Hectares ie., 5.45 Acres at Kottavadi Village, Thalavadi Panchayat Union. The father of the petitioner's died intestate on 30.04.192, leaving behind the petitioners as legal heirs. On 22.05.2024, the petitioners entered into a partition deed and presented the document for registration, the respondent issued the impugned order stating that the father of the petitioner had executed a mortgage deed on 08.02.1979 in favour of one Bakyalakshma and the said mortgage deed was not redeemed and on production of cancellation receipt the said partition deed can be registered. Hence, the present petition.

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



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4. As far the issue is concern, this Court held in the judgments of this Court in (i) **N.Ramayee Vs. Sub Registrar, Valapady, Salem District and another** reported in **2020 (6) CTC 697** and (ii) **Subramani Vs. SRO, Rasipuram in WP.No.11056 of 2024 dated 26.04.2024** clearly held that the mere mortgage deed is not a bar for any subsequent transfer.

5. In the judgment of this Court in Subramani's case in paragraph 31(e) it is held as follows :-

“31(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 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



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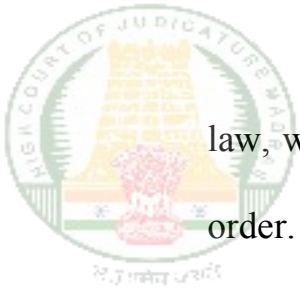


properties to another person, the buyer is in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him 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 sale and the encumbrance can be freed after issuance of notice to the encumberer.”

6. 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.

7. In the result, this Writ Petition is allowed and the impugned order of refusal slip No.RFL/Thalavadi/13/2024 dated 22.05.2024 is set aside and the second respondent is directed to register the Partition Deed presented by the petitioners for registration, if it is otherwise in order, as per



law, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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12.07.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To
The District Registrar
Gobichettipalayam
Erode District.

2.The Sub Registrar
Thalavadi, Erode.



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N.SATHISH KUMAR, J.

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