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W.P.No.19869 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.19869 of 2024

Karupathaal

... Petitioner

vs.

The Sub Registrar,
Office of the Sub-Registrar-Vellakoil,
Vellakoil,
Tiruppur District.

2.The Branch Manager,
RBL Bank Limited,
Kaagam Branch,
49/A, Manalkaatu Thottam,
Ellakadai,
Erode - 638 109.
(R2-impealed as per order dated 28.08.2024 in
WMP.No.22958 of 2024 in WP.NO.19869 of 2024)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorified Mandamus, calling for the records of the respondent in relation to the "Refusal Check Slip" in Refusal Number:RFL/Vellakoil/13/2024, dated 05.07.2024 and to consequently direct the respondent to register the sale deed executed by the petitioner in



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favour of Arunachalam son of Nallasamy and Kalarani wife of Arunachalam, dated 05.07.2024 within a time frame as fixed by this Court.

For Petitioner : Mr.M.R.Thangavel

For Respondent : Mr.T.Chezhiyan
Additional Government Pleader
for R1
Mr.A.Murali Adikesavan
for implead 2nd defendant

ORDER

The writ petition is filed challenging the "Refusal Check Slip" issued by the respondent refusing to register the sale deed presented for registration on the ground the subject matter of the same was mortgaged with the second respondent. Therefore, the first respondent has directed the petitioner to produce "No Objection Certificate" from the second respondent Bank. Aggrieved by the same, the petitioner is before this Court.

2. According to the petitioner, her husband Seerangan purchased an extent of 6.92 acres of land in R.S.No.376/1(Old S.No.66/1), Poomandanvalasu Village under registered sale deed registered in Document No.1077 of 2019 on the file of the Sub Registrar, Vellakoil. The petitioner's husband availed loan from second respondent bank and executed a



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registered memorandum of deposit of title deeds in favour of the second respondent bank and the same was registered as Document No.1113 of 2020 on the file of the Sub Registrar, Vellakoil. Therefore, the original sale deed in favour of petitioner's husband is deposited with the second respondent bank. Later on, the petitioner's husband executed a Will dated 05.05.2020 bequeathing the subject property in favour of the petitioner and he died on 03.09.2020. Therefore, as on today, the petitioner claims to be absolute owner of the property.

3. It is the case of the petitioner that she sold the property to one Arunachalam and his wife viz., Kalarani by a sale deed dated 05.07.2024 and the same was presented for registration before the first respondent and the first respondent by impugned refusal check slip refused to register document by insisting the petitioner to produce no objection certificate from the second respondent bank. Therefore, the petitioner is before this Court.

4. The learned Additional Government Pleader appearing for the 1st respondent submits that since the subject property is already



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mortgaged with the second respondent bank, the petitioner was directed to produce no objection certificate from the second respondent. He also submitted that the petitioner shall produce the original title document or certificate from the bank regarding the deposit of the title documents at the time of registration.

5. Mr.A.Murali Adikesavan, learned counsel appearing for the second respondent on instruction submits that the original title document of the said property was deposited with the respondent bank and the said statement is recorded. The memorandum of deposit of title deeds executed by petitioner's husband in favour of second respondent was registered as Document No.1113 of 2020 on the file of the 1st respondent and the same is also included in the typed set of papers. Therefore, it is clear that original sale deed in favour of the petitioner's husband is deposited with the bank and the same is not available with the petitioner. It is also asserted by the petitioner that the entire loan amount has been paid to the second respondent by the petitioner and the said fact was also admitted by the learned counsel for the second respondent. Even assuming that the loan amount has not been discharged and there is a subsisting mortgage, still the petitioner as a owner



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of the property is entitled to sell the same to the 3rd party, subject to mortgage liability. Hence, the first respondent cannot insist the petitioner to produce no objection certificate from the mortgagee. This position was clarified by this Court Subramani Vs The Sub Registrar WP.No.11056 of 2024. The relevant observation reads as follows:

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 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.

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.”

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 SubRegistrar 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.

In view of the above discussion, the impugned check slip issued by the respondent is unsustainable in law and consequently the same is quashed.

6. Therefore, the writ petition is allowed by quashing the refusal check slip and the petitioner is directed to represent the document before the respondent within a period of two weeks from the date of receipt of a copy of this order. The respondent shall not insist production of no objection certificate from the second respondent bank or production of original sale deed in favour of the petitioner's husband as the same is deposited with the second respondent bank. If the document is represented for registration along with affidavit mentioning fact of deposit of title deeds, the same shall be registered by first respondent, if it is otherwise in order.



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WEB COPY 7. Accordingly, this writ petition is disposed of. No costs.

28.08.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To
The Sub Registrar,
Office of the Sub-Registrar-Vellakoil,
Vellakoil,
Tiruppur District.

2.The Branch Manager,
RBL Bank Limited,

8/10



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S.SOUNTHAR, J.

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