



WEB COPY



WP.No.20243 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.20243 of 2024
and W.M.P.No.22158 of 2024

M.Devaki

.. Petitioner

Versus

The Sub Registrar
Singanallur
4/101A, Thottangal Veethi
Tiruchy Road, Ottorpalayam
Chindamaniputhur Post
Coimbatore – 641 015

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Notice dated 19.06.2024 bearing reference Ni.Aa.No.146/2024 issued by the respondent herein, quash the same and consequently direct the respondent herein to register the Settlement Deed dated 13.05.2024 executed by the petitioner to and in favour of her son Mr.Boobalakrishnan.

For Petitioner : M/s.Subhang P.Nair

For Respondent : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

ORDER

Challenge has been made to the refusal slip dated 19.06.2024 refusing to

register the settlement deed on the ground that already mortgage is executed in



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favour of the bank, quash the same and direct the respondent to register the settlement deed dated 13.05.2024.

2. Heard both sides and perused the materials placed on record.

3. Since, the impugned order is passed against the settled position of law, no counter is required. With the consent of both parties, this writ petition is taken up for final disposal in the admission stage itself.

4. This Court has repeatedly held that mere pendency of the mortgage is not a bar to transfer. The mortgage is the first charge, any transfer is always subject to the mortgage. When the substantive provisions of law permits such transfer, once again repeatedly passing the refusal order under Rule 55A cannot be sustained in the eye of law.

5. It is relevant to note that 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. That apart, 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 Sub-Registrar 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.



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N. SATHISH KUMAR, J.

7. Such view of the matter, the impugned order is liable to be quashed and the same is hereby quashed. The respondent is directed to register the document dated 13.05.2024 presented by the petitioner within a period of one week from the date of receipt of a copy of this Order.

8. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.07.2024

dhk
Index : Yes/No
Neutral Citation : Yes/No

To

The Sub Registrar
Singanallur
4/101A, Thottangal Veethi
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