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W.P.No.26997 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 02-04-2024

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.26997 of 2023

K.Venkatesan

...

Petitioner

-VS-

The Joint Sub-Registrar No.II,
Office of the Joint Sub-Registrar No.II,
Villupuram,
Villupuram District.

...

Respondent

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus to call for the entire records relating to the Refusal Check Slip, dated 28.04.2023, in RFL/Joint Sub-Registrar No.2, Villupuram/38/2023, issued by the respondent and quash the same and consequently direct the respondent to register the Gift Deed on re-presentation.

For Petitioner : Mr.C.Munusamy

For Respondent : Mr.Yogesh Kannadasan,
Spl.Govt.Pleader.

ORDER

This Writ Petition has been filed challenging the order of the registering authority, issuing Refusal Slip.



2. The case of the petitioner is that when he presented the document executed in favour of his son on 25.04.2023 before the respondent, the same has been refused to be registered and Refusal Slip issued.

3. Though counter is not filed, learned Special Government Pleader appearing for the respondent raised a legal objection, stating that the only legal ground for not registering the document is the legal bar contained in Section 22B of the Registration Act, (State Act), in short, "the Act".

4. Heard both sides and perused the material available on record.

5. The impugned Refusal Slip has been issued mainly on the ground that there is an attachment by the Court. Encumbrance Certificate, produced along with the typed set of papers, indicates that the property has been attached by the Subordinate Court, Villupuram, on 12.12.1988, for a sum of Rs.23,360/- in a suit filed by State Bank of India as against some of the defendants.

6. It is relevant to note that if any attachment is made in a civil suit based on a decree, the decree ought to be enforced within a period of 12 years. If the decree is not put in enforcement, the right acquired under the decree gets automatically extinguished. Therefore, when the decree is of the year 1988 and the same is still allowed to continue, it can be cited as a reason for denying the right of the owner to deal with his property. It will, in fact, take away the constitutional right to own the property under Article 300A of the Constitution of India.



7. Section 22B of the State Act reads as under :

“22-B. Refusal to register forged documents and other documents prohibited by law.— Notwithstanding anything contained in this Act, the registering officer shall refuse to register the following documents, namely:—

(1) forged document;

(2) document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force;

(3) document relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal;

(4) any other document as the State Government may, by notification, specify.”.

8. Sub-clause (3) puts a blanket ban on registration of document in the event of attachment in respect of the property. There is no clarification with regard to the duration of attachment.

9. 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. For example, if there is an attachment for a sum of



Rs.1.00 lakh over the property worth about 10.00 crores, it cannot be said that the entire transaction is void. The sale will be void only to the maximum limit of Rs.1.00 lakh, which is enforceable under the order of attachment.

10. Be that as it may. The present Writ Petition does not deal with the challenge to Section 22B. Considering the fact that the attachment is of the year 1988, E.P. should have been filed within a period of 12 years. In that case, execution proceedings should have been completed even before 2000 itself. Therefore, mere entry in the Encumbrance Certificate cannot be a ground to deny the right of the owner to deal with the property. Entries in the Encumbrance Certificate also indicate that despite attachment, several transactions have already been registered.

11. In such view of the matter, Refusal Slip issued by the respondent is set aside and the respondent is directed to register the document within a period of 15 days from the date of receipt of this order.

12. Writ Petition is allowed. No costs.

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Office of the Joint Sub-Registrar No.II,
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N.SATHISH KUMAR, J.

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