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W.P.No.27844 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

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THE HONOURABLE MR. JUSTICE S. SOUNTHAR

W.P No.27844 of 2024

Rajamani

...Petitioner

Vs.

1. The District Registrar,
Office of District Registrar,
Cuddalore, Cuddalore District.
2. The Sub Registrar,
Registrar Office,
Thirunavallur, Kallakurich District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned refusal slip in RFL/Thirunavallur/5/2024 dated 15.02.2024 issued by the second respondent and quash the same and consequently direct the second respondent to register the petitioner's sale Agreement executed in favour of one Kuppusamy dated 15.02.2024.

For Petitioner : Mr.C.Iyyappa Raj

For Respondents : Mr.M.Shahjahan
Special Government Pleader



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ORDER

Aggrieved by the impugned Refusal Check Slip bearing Refusal No.RFL/Thirunavallur/5/2024, dated 15.02.2024 issued by the second respondent refusing to register the Sale Agreement dated 15.02.2024 executed by the petitioner in favour of one Kuppusamy on the ground that the subject property was already attached, the petitioner has come by way of this writ petition.

2. It is the case of the petitioner that she purchased the subject property under registered sale deed dated 09.11.2006 from her vendors Thangavelu Paddayachi and Ramalingam. It appears that a Civil Suit in O.S.No.118 of 1999 was filed before the First Additional Sub Court, Villupuram, against the vendors of the petitioner. In the said suit, an application in I.A.No.513 of 1999 in O.S.No.118 of 1999 was filed for attachment of the subject property and an order attaching the property was ordered on 28.11.2000. Relying on the said attachment order, the respondents refused to register the sale agreement presented by the petitioner. Therefore, the petitioner is before this court.



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3. The learned counsel for the petitioner submitted that the existence of attachment over the subject property is not a ground to refuse registration of the document.

4. Mr. M. Shahjahan, learned Special Government Pleader, who takes notice for the respondents, by relying on the order of attachment passed by the Civil Court, submitted that in view of the same, the respondents are unable to proceed with the registration of the sale agreement pertaining to the subject property.

5. The issue involved in this case regarding the existence of attachment over the property, was already considered by this Court in ***Subramani vs. Sub Registrar and another*** reported in (2024) 3 MLJ 588 wherein this Court observed as follows:-

"26. It is relevant to note that there are some instances notice 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



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as against all claims enforceable under the attachment. The Hon'ble Supreme Court in the case of M.Marathachalam Pillai v. Padmavathi Ammal reported in (1971) 3 SCC 878 has held that the sale is 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. Muthyyan Mudaliar* reported in MANU/TN/0620/1973 : (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."

6. In view of the law laid down in the above mentioned case and Section 64 of the Code of Civil Procedure, it is clarified that subject to right of



the attachment creditors the document can be registered by the Registering authorities. The registration of the document will no way affect the rights of attachment creditor. Hence, the respondents are not justified in refusing registration of the Sale Agreement presented for registration. Therefore, the impugned refusal slip is not sustainable in the eye of law and the same is quashed. In view of the same, this Court is inclined to direct the petitioner to re-present the document before the second respondent within a period of two weeks from the date of receipt of a copy of this order. The second respondent shall register the document, if it is otherwise in order.

7. Accordingly, the Writ Petition stands allowed. No costs.

24.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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S. SOUNTHAR, J.

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