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W.P.No.32578 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.32578 of 2024

S.Veerakumar

... Petitioner

VS.

1.The Sub Registrar,
Kangeyam,
Taluk Office Campus,
Kangeyam,
Tiruppur – 638 701.

2.D.r.L.C7, Kangeyam Co-operative Primary
Agricultural and rural Development Bank,
Represented by its Secretary,
Old Fort Road,
Kangeyam,
Tiruppur – 638 701.

3.M.Balasubramaniam

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in the refusal slip bearing number RFL/Kangeyam



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/5/2022 dated 07.01.2022 and to quash the same as illegal, incompetent, without jurisdiction and further direct the respondent to register sale deed dated 07.01.2022 presented by the petitioner and for consequential orders the same.

For Petitioner : Mr.R.Karthikeyan

For R1 : Mr.B.Vijay
Additional Government Pleader

For R2 : Mr.C.Selvaraj
Additional Government Pleader

ORDER

By consent of both the learned counsel appearing for the petitioner as well as respondent 1 and 2, this writ petition is disposed of at the admission stage itself.

2. Aggrieved by the impugned Refusal Check Slip bearing No. RFL/Kangeyam /5/2022, dated 07.01.2022 issued by the 1st respondent refusing to register the Sale Deed dated 07.01.2022 presented for registration on the ground that the petitioner failed to register the receipt for



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having discharged the mortgage debt subsisting in respect of subject property, the petitioner has come before this Court.

3. It is the case of the petitioner that the subject property belonged to his vendor C.Sumathi and she executed a Sale Deed in favour of the petitioner on 07.01.2022 conveying the subject property for a sale consideration of Rs.47,08,800/-. The same was presented for registration before the 1st respondent and he refused registration on the ground that the receipt for discharging the earlier mortgage reflected in the encumbrance certificate was not produced.

4. The learned counsel appearing for the petitioner by relying on the order passed by this Court in ***Subramani vs. Sub Registrar, Office of the Sub-Registrar and another*** in ***W.P.No.11056 of 2024, dated 26.04.2024***, submits that existence of mortgage liability is not a ground to refuse registration of the subsequent sale deed.

5. Mr.B.Vijay, learned Additional Government Pleader, who is taking notice for the 1st respondent, submits that there is an encumbrance pertains



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to the property in the form of mortgage, without clearing the same, the petitioner's vendor is not entitled to convey the property to the petitioner.

6. This Court in ***Subramani vs. Sub Registrar, Office of the Sub-Registrar and another*** in ***W.P.No.11056 of 2024, dated 26.04.2024***, while considering the existence of mortgage on the property to be conveyed observed 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



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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.”

7. Therefore, it is settled law a owner of the property is entitled to sell the property subject to mortgage liability, if any. The learned counsel appearing for the petitioner submits that the mortgage liability was already discharged, however, the receipt issued by the mortgagee was not registered.

8. In view of the settled position that vendor is entitled to convey the property subject to mortgage liability, the Registering Authority is not entitled to refuse registration on the ground that the property is subject to mortgage liability. Therefore, the impugned Refusal Check Slip in RFL/Kangeyam/5/2022, dated 07.01.2022 issued by the 1st respondent is set aside.



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9. The petitioner is directed to represent the document before the 1st respondent for registration, within a period of two weeks from the date of receipt of copy of this order. The 1st respondent shall consider the same for registration, if it is otherwise in order.

10. With the above directions, the Writ Petition stands allowed. No costs.

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Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm

To

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Kangeyam,
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Kangeyam, Tiruppur – 638 701.

2. The Secretary,
D.r.L.C7, Kangeyam Co-operative Primary
Agricultural and rural Development Bank,
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