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WA No.34 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **16.07.2024**

CORAM:

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN**

and

THE HONOURABLE MR.**JUSTICE R.SAKTHIVEL**

WA No.34 of 2024

K.C.Mohan

: Appellant

versus

1.The Sub Registrar,
Joint SRO II, Krishnagiri,
Krishnagiri

2.Jani Basha

: Respondents

Prayer: Writ appeal filed against the order dated 20.10.2023 in WP No.28570 of 2023.

For the Appellant

: Mr.M.Abdul Razack

For the Respondents

: Mr.L.S.M.Hasan Faizal,
Additional Government Pleader
for the first respondent

Mr.E.Kannadsan,
for the second respondent

JUDGMENT

(made by R.SUBRAMANIAN, J.)

The appellant is aggrieved by the dismissal of his petition in WP No.28570 of 2023. The challenge in the writ petition was to the refusal check slip issued by the Sub-Registrar, Krishnagiri, refusing to register the sale deed on the ground



that the suit in OS No.111 of 2023 is pending and the property in question viz.,
the property in S.No.124/8A is the subject-matter of the said suit.

2. Learned Single Judge has dismissed the writ petition on the ground that since the suit is pending in respect of larger extent of the said survey number, refusal to register is justified.

3. The Registrar can refuse the register documents only under certain circumstances enumerated either under Section 22-A or Section 22-B of the Registration Act or Rule 55A of the Registration Rules.

4. Sections 22-A and 22-B of the Registration Act read as follows:

"22-A. Refusal to register certain documents.—

Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents, namely:—

(1) instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease,—

(i) belonging to the State Government or the local authority or Chennai Metropolitan Development Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971;

(ii) belonging to, or given or endowed for the purpose of, any religious institution to which the Tamil



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Nadu Hindu Religious and Charitable Endowments Act, 1959 is applicable;

(iii) donated for Bhoodan Yagna and vested in the Tamil Nadu State Bhoodan Yagna Board established under section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958; or

(iv) of Wakfs which are under the superintendence of the Tamil Nadu Wakf Board established under the Wakf Act, 1995,

unless a sanction in this regard issued by the competent authority as provided under the relevant Act or in the absence of any such authority, an authority so authorised by the State Government for this purpose, is produced before the registering officer;

(2) instrument relating to the transfer of ownership of lands converted as house sites without the permission for development of such land from planning authority concerned:

Provided that the house sites without such permission may be registered if it is shown that the same house site has been previously registered as house site.

Explanation I.—*For the purpose of this section 'local authority' means,—*

(i) any Municipal Corporation constituted under any law for the time being in force; or

(ii) a Municipal Council constituted under the Tamil Nadu District Municipalities Act, 1920 ; or

(iii) a Panchayat Union Council or a Village



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Panchayat constituted under the Tamil Nadu Panchayats Act, 1994 ; or

(iv) any other Municipal Corporation, that may be constituted under any law for the time being in force.

Explanation II.—*For the purpose of this section 'planning authority' means the authority constituted under section 11 of, and includes the Chennai Metropolitan Development Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971;*

(3) instrument relating to cancellation of sale deeds without the consent of the person claiming under the said sale deed."

"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."



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A reading of the above provisos make it clear that the pendency of a suit is not a ground for refusing registration.

5. Rule 55A of the Registration Rules reads as under:

"55A. (i) *The registering officer before whom a document relating to immovable property is presented for registration, shall not register the same, unless the presentant produces the previous original deed by which the executant acquired right over the subject property and an Encumbrance Certificate pertaining to the property obtained within ten days from the date of presentation:*

Provided that in case an encumbrance as to mortgage, orders on attachment of property, sale agreement or lease agreement exists over the property, the registering officer shall not register such document if the time limit for filing of suit is not lapsed, or No Objection Certificate is not granted by the appropriate authority or raising of the attachment is not done, as the case may be:

Provided further that in case the previous original deed is not available as the property being an ancestral one, the registering officer shall not register such document, unless the presentant produce any revenue record evidencing the executant's right over the subject property such as patta copy issued by Revenue Department or tax receipt:

Provided also that if the previous original deed is lost, the registering officer shall register such document



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only on production of non-traceable Certificate issued by the Police department along with the advertisement published in the local Newspaper as to the notice of loss of the previous original deed:

Provided also that production of the previous original deed shall not be necessary where the Government or a Statutory body is the executant of the document or for such class of documents as may be notified by the Inspector General of Registration, from time to time.

(ii) The registering officer, on being satisfied that the description of the property contained in the document presented for registration conforms with the description of the property found in the previous original deed produced by the presentant as provided under this rule, he shall inscribe the word 'verified' on a conspicuous portion of the first page of such title deed and affix his signature with date and thereafter cause scanning of page containing such inscription as a reference document."

(iii) In case where revenue records are produced under this rule, the same shall be scanned as the main document and where Non-Traceable Certificate and the advertisement published in the local Newspaper are submitted by the presentant, the same shall be scanned as reference documents:

Provided that such verification and scanning of the previous original deed or record in the manner provided under this rule, shall not be construed to be an act of ascertaining the validity of the document presented for registration and also the same shall not absolve or



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deprive any person from the provisions contained in Parts XIV and XV of the Registration Act, 1908 (Central Act XVI of 1908)."

6. Even there, we do not find any prohibition relating to registration of documents where a suit is pending.

7. Section 52 of the Transfer of Property Act deals with the doctrine of *lis pendens* and it reads as follows:

"52. Transfer of property pending suit relating thereto-

During the [pendency] in any Court having authority [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by [the Central Government] , of [any] suit or proceeding which is not collusive and in which any right to immoveable property is directly and specifically in question, ***the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.***
(Emphasis Supplied)

[Explanation - For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of



competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]”

8. A reading of the above provision would show that it only makes transfers made during the pendency of suits where, substantial right to immovable property is in question, subject to the result of the litigation, unless such sale or transfer is made with the permission of the Court. Therefore, there is no statutory bar for registering a document relating to a property in respect of which a suit is stated to be pending.

9. The Sub Registrar has filed a counter-affidavit in the writ petition wherein it is stated that registration was refused because the suit was filed impleading the Sub-Registrar as a party to the document.

10. Mere impleading of a Sub-Registrar to a suit will not enable him to refuse registration. Such mechanical refusal only leads to people being driven to this Court. Right to property is guaranteed under Article 300A of the Constitution of India and it is a Constitutional right which is in a higher pedestal than a fundamental right. Registrars cannot be allowed to meddle with such right, which is constitutionally protected, on flimsy grounds. Hence, we are unable to



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sustain the refusal check slip issued by the Sub Registrar, Joint SRO II, Krishnagiri. Therefore, the impugned check slip, as well as the order of learned Single Judge are set aside.

11. The appellant will re-present the sale deed within a period of fifteen days from the date of receipt of a copy of this judgment and on such re-presentation, the Sub Registrar, Joint SRO II, Krishnagiri, will register the same subject to the appellant satisfying the other requirements of law.

12. In the result, the writ appeal is allowed. There will be no order as to costs.

(R.S.M., J.) (R.S.V., J.)
16.07.2024

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R.SUBRAMANIAN, J.

and

R.SAKTHIVEL, J.

(tar)

To

1.The Sub Registrar,
Joint SRO II, Krishnagiri,
Krishnagiri

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