



W.P.(MD).No.3516 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.3516 of 2024
and W.M.P(MD) No.3478 of 2024

Annavi

... Petitioner

Vs

The Sub Registrar,
Tharagampatti Sub Registration Office,
Karur District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned Refusal Check Slip No. RFL/Tharagampatti/2/24, dated 22.01.2024 and quash the same.

For Petitioner : Mr. B.Jameelarasu

For Respondent : Mr.D.S.Neduncheliyan
Government Advocate



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ORDER

The present writ petition has been filed challenging the impugned Refusal Check Slip No. RFL/Tharagampatti/2/24, dated 22.01.2024.

2.By consent of both parties, considering the limited relief sought for by the petitioner, the Writ Petition is taken up for final disposal at the stage of admission itself.

3.Heard, the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent. Perused the materials on record.

4.(i).The petitioner is the absolute owner of the property comprised in S.Nos.273/2A, 273/2B and 273/2C measuring to a total extent of 60 cents situated at Kosoor village, Kadavoor Taluk, Karur District. The property was originally purchased by the petitioner's father vide sale deed, dated 27.09.1954.

(ii).Due to inadvertance of the Revenue authorities, the Patta of the said property was wrongly mutated in the name of one Vayyapuri instead of petitioner's name. Taking advantage of said mistake, the said Vaiyyapuri has



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executed a gift deed in favour of his wife Rasammal. After such illegal registration, the said Rasammal has tried to change the Patta in her name.

(iii).Therefore, the petitioner filed a civil suit before the District Munsif Court, Kulithalai in O.S.No.259 of 2017 seeking for declaration to declare that the gift deed, which was executed by Vayyapuri in favour of his wife as null and void and also for grant of permanent injunction restraining them from interfering with the peaceful position and enjoyment of the said property. However, neither the Vayyapuri nor his wife was ready to conduct the case, therefore, the suit was set ex-parte and an ex-parte Decree was passed in favour of the petitioner on 06.10.2018. As against the said ex-parte Decree, the defendants in the said suit ie., Vayyapuri and his wife have not preferred any appeal. Hence, the Judgment and Decree attained its finality.

(iv).Under such circumstances, the petitioner approached the respondent explaining the entire details and requested to register the ex-parte Decree and Judgment passed in O.S.No.259 of 2017, dated 06.10.2018 in the Encumbrance Certificate maintained by the respondent's office with respect to the subject property. However, the impugned order of refusal cheque slip came to be issued by the respondent office on 22.01.2024. Challenging the same, this writ petition came to be filed.



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5.The learned counsel appearing for the petitioner relying upon the Judgment passed by this Court in W.P(MD) No. 36564 of 2023, dated 05.01.2024 submitted that the case in hand is squarely covered by the said order and prayed to allow the petition.

6.Per contra, the learned Government Advocate appearing for the respondents prayed to dismiss the writ petition, submitting that the refusal check slip issued by the respondent is in order and the registration has been rejected only relying upon Clause 9(7) of the circular issued by the Inspector General of Registration.

7.As submitted by the learned counsel for the petitioner, the case in hand is squarely covered by the order of this Court passed in W.P(MD) No. 36564 of 2023 and the relevant portion which is extracted as follows:

“5. In this case, a perusal of the refusal check slip does not show anything that the decree was presented for registration beyond the stipulated period of 4 months and therefore, the same was refused to be registered whereas, the reason given by the respondent for not registering the decree is that since it was an ex-parte decree, as per the circular டி/க/எண்/34930 – ஈ1 – 2019 நாள் 27/02/2023,



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issued by the Inspector General of Registration, Chennai, ex parte decree cannot be registered.

6. It is settled proposition of law that no circular will prevail over the Act or Rules. Therefore, the reason given by the respondent for not registering the ex-parte decree based on the said circular is against the provisions of law. Circular is only for internal communication and not to bypass or over rule or modify the Act. Therefore, though it is not challenged, since this Court has come across several writ petitions wherein, the Registrars by citing the said circular, have refused to register the ex-parte decree, the specific portion in the Circular e/f/vz;/34930-rp1-2019 ehs; 27/02/2023 directing the registering authority not to register the ex-parte decree, which is against Act or Rule, is hereby quashed.”

8. Fully fortified by the order passed by this Court as discussed *supra*, I hereby observed that it is a settled proposition of law that no circular would prevail over Act and Rules. That apart, relying upon the circular, which has already been quashed by this Court in W.P(MD) No.36564 of 2023, the respondent ought not to have rejected the ex-parte Decree and Judgment.

9. In view of the same, the impugned order is quashed and the respondent is directed to register forthwith the ex-parte Decree and Judgment



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passed in O.S.No.259 of 2017, dated 06.10.2018, in the Encumbrance Register pertaining to petitioner's property, if it is otherwise in order,

10.Accordingly, this petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

16.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

To

The Sub Registrar,
Tharagampatti Sub Registration Office,
Karur District.



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L.VICTORIA GOWRI, J.

PNM

ORDER IN
W.P.(MD).No.3516 of 2024
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