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W.P.(MD)NO.7645 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.08.2024

PRONOUNCED ON : 15.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.7645 of 2023

Joshita Lawrence

... Petitioner

Vs.

1. The Sub Registrar,
Eraniel,
Kanyakumari District.

2. Edwin

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned refusal check slip issued by the first respondent in refusal No.RFL/Eraniel/23/2023 dated 20.02.2023 and quash the same as illegal and consequently direct the first respondent to register the sale deed dated 20.02.2023 submitted by the petitioner within a time frame fixed by this Court.

For Petitioner : Mr.R.J.Karthick

For R-1 : Ms.D.Farjana Ghoushia,
Special Government Pleader.

For R-2 : Mr.C.Kishore

* * *

**ORDER**

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Heard both sides.

2. The petition-mentioned property comprised in survey Nos.358/4, 429/1 and 429/2 Aaloor “A” Village, Kalkulam Taluk, Kanyakumari District measuring 181 cents belonged to the second respondent, husband of the writ petitioner. The property was divided into three parcels namely, “A”, “B” and “C”. “A” schedule was settled in favour of the writ petitioner. “B” schedule was settled in favour of Anshijo, elder son. “C” schedule was settled in favour of the younger son Joel Jackson. The second respondent settled the said property in favour of the writ petitioner and her two sons vide settlement deed dated 10.04.2012 (document No.1684 of 2012). A condition was imposed that the sons should not alienate the property to third parties without the consent of the petitioner and the second respondent. Subsequently, vide settlement deed dated 27.04.2022 (document No.2471 of 2022) the sons (Anshijo and Joel Jackson) settled the “B” and “C” properties in favour of the writ petitioner herein(their mother).



3. According to the petitioner, she had to urgently pay her sons' college fees and hence, she sold 52.259 cents in survey No.429/1 and 429/2 in favour of one Naina Mohamed Rajik vide sale deed dated 20.02.2023. The sale deed was presented for registration. The registering authority / first respondent herein refused registration citing the restrictive condition set out in the settlement deed dated 10.04.2012. Questioning the same, this writ petition came to be filed.

4. Since the learned counsel appearing for the petitioner submitted that the petitioner needs to raise funds urgently for her sons' education, the matter was referred for mediation. The second respondent entered appearance through counsel. The mediation efforts could not succeed.

5. The second respondent had already settled the property in favour of his wife and sons. He no longer has any claim or right over the property. I fail to understand as to why the second respondent should put spokes in the writ petitioner's wheel. I understand that his relationship with the writ petitioner / his wife is under strain. But that need not come in the way of permitting the land to be used for raising funds to finance



the sons' education. Morally, I feel that the second respondent's position cannot be justified. But I have to adjudicate the legal issue and I cannot anchor my decision on moral grounds.

6. It is true that in the settlement deed dated 10.04.2012 executed by the second respondent, there is restriction of alienation by the sons. In Gomti Singh V. Anari Kuar (AIR 1929 All 492), the issue as to whether the restraint on alienation by the husband was an absolute restraint within the meaning of Section 10 of the Transfer of Property Act, 1882, was considered. The relevant paragraph reads as follows:-

“5. ... But in order to determine whether the restraint was absolute or partial one must gather the intention of the transferor from the contents of the document. It seems to us that the idea underlying the execution of the tamliknama was to protect the property and retain it in the family and prevent it from passing out of the family. **Although on the one hand the donor transferred ½ share to his wives he reserved to himself the power to refuse consent for alienation. It seems to us that for all practical purposes Basdeo Singh reserved to himself the absolute power of preventing alienation of any kind. Unless he himself was prepared to waive this condition, he gave no power to his wives to transfer the property gifted to them under any**



circumstances. We therefore think that this amounted to an absolute restraint on alienation within the meaning of S. 10."

The settlement deed has been drafted in Tamil and it reads as follows:-

“B, C தபசில் சொத்துக்களை மேற்படி மைனர்கள் மேஜரானவுடன் ஏதாவது ஆவணங்கள் எழுதி பதிவு செய்து வேறு நபர்களுக்கு கொடுக்க வேண்டுமென்றால் என் சம்மதத்தின் பேரிலும் என் மனைவி ஜோஷிற்றாலாரன்ஸ் சம்மதத்தின் பேரிலும் தான் செய்ய வேண்டும். மீறி ஏதாவது செய்தால் அது செல்லத்தக்கதல்ல.”

7. The restrictive condition of this nature will have to be construed strictly and not in a probable or expansible manner. It only reads that if the sons after attaining majority want to alienate “B” and “C” schedule properties in favour of the third parties, they must get prior consent of the second respondent and the writ petitioner. The expression used is “வேறு நபர்களுக்கு”. It obviously refers to third parties. The writ petitioner is not a third party. She is a part of the family. Therefore, the sons were not barred from settling the properties(schedule “B”and schedule “C”) in favour of their own mother (writ petitioner herein). The settlement deed dated 10.04.2012 reads that if the sons alienate the property in breach of the restriction, it is not valid. It only means that it



would be open to the settlor to question the alienation made in favour of the third parties. Even if the restriction is held applicable to the mother, it would amount to an absolute restraint on alienation and would be void under Section 10 of the Transfer of Property Act. Thus the registering authority cannot cite the said restrictive condition to refuse registration. In any event, the second respondent has not filed any civil suit questioning the execution of the settlement deed dated 27.04.2022 in favour of the petitioner. Thus, as on date the document No.2471 of 2022 standing in the name of the petitioner is holding good. Thus the petitioner is the absolute owner of the property. It is very much open to the writ petitioner to deal with the property in the manner she deems fit. The restrictive stipulation found in the document No.1684 of 2012 cannot be put against the petitioner herein. The registering authority erred in citing the restrictive stipulation found in the document No.1684 of 2012 for refusing registration of the sale deed dated 20.02.2023 executed by the petitioner herein in favour of Naina Mohamed Rajik. If Anshijo or Joel Jackson had directly executed the sale deed in favour of Naina Mohamed Rajik, then probably the registering authority would be justified in citing the aforesaid restrictive condition. Such is not the case. The situation had undergone a dramatic change.



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8. The second respondent cannot plead ignorance of the registration of the settlement deed dated 27.04.2022(document No.2471 of 2022) in favour of the writ petitioner. Any registration of a document is a notice to the public at large. In view of his failure to question the same by filing a civil suit, he can no longer fall back on the condition imposed by him while executing the document No.1684 of 2012. The registering authority need not bat for the second respondent. The second respondent is capable of fighting his own battles. The impugned refusal check slip is set aside. The petitioner as well as the purchaser are at liberty to re-present the document. It shall be registered and released subject to fulfilment of the other usual formalities. This writ petition stands allowed. No costs.

15.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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8

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G.R.SWAMINATHAN,J.

PMU

To:

The Sub Registrar,
Eraniel,
Kanyakumari District.

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