



W.P.(MD)No.8557 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.8557 of 2023

T.Sudalai Muthu

... Petitioner

Vs

1. The Inspector General of Registration,
Registration Department, No.100,
Santhome High Road, Chennai - 600 028.

2. The Deputy Inspector General of Registration,
Registration Department,
St.Mark Street, Near Sankar Colony,
Palayamkottai, Tirunelveli District.

3. The District Registrar,
Registration Department,
Tuticorin District.

4. The Sub Registrar,
Pudukkottai, Tuticorin District.

5. G.Paramasivan and Brothers Commission Maligai,
Reg.No.26/1992,
Through its one of the Partners,
G.Paramasivan

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 4th respondent to remove the entries made in the Encumbrance Certificate in Document No.8 of 2005 dated 25.10.2005 from his records in respect of the properties in Survey No. 624 measuring 0.58 hectare, Survey No.614 measuring 0.78 hectares, Survey No. 619/1 measuring 0.315 hectares, Survey No. 556/1 measuring 0.64 Hectares, Survey No.556/2 measuring 0.21 Hectares situated in Sekkarakudi Village, Srivaikundam Taluk, Thoothukudi District within a time frame stipulated by this Court.

For Petitioner : Mr.R.J.Karthick
For Respondents : Mr.C.Satheesh (R1-R4)
Government Advocate

No Appearance (R5)

ORDER

This Writ Petition has been filed seeking a direction to the 4th respondent to remove the entries made in the Encumbrance Certificate in Document No.8 of 2005 dated 25.10.2005 from his records in respect of the properties in Survey No. 624 measuring 0.58 hectare, Survey No.614 measuring 0.78 hectares, Survey No. 619/1 measuring 0.315 hectares, Survey No. 556/1 measuring 0.64 Hectares, Survey No.556/2 measuring 0.21 Hectares situated in Sekkarakudi Village, Srivaikundam Taluk, Thoothukudi District.



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2.Heard Mr.R.J.Karthick, learned counsel appearing for the petitioner and Mr.C.Satheesh, learned Government Advocate appearing for R1 to R4. Perused the materials available on record.

3.It is the case of the petitioner that when the petitioner presented the sale deed, dated 28.11.2022, the same has been refused to be registered citing the Encumbrance Certificate relating to the attachment order, passed on 25.10.2005 in I.A.No.358 of 2005 in O.S.No.92 of 2005, on the file of Sub Court, Sankarankovil. The suit has been decreed in the year 2008 and settled between the parties and the time for filing execution petition is also over. That being so, based on the attachment, now the document is refused to be registered. Hence, this petition has been filed.

4.It is relevant to note that this Court has already substantially held that mere attachment is not a bar for sale. The sale is void only in respect of claims enforceable under attachment and not in its entirety as per Section 64 of Civil Procedure Code. That apart, the suit is of the year 2005 and decreed on 03.12.2008. Copy of the decree is also annexed in the typed-set of papers. The said decree has to be enforced within a period of 12 years and now the period of



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12 years is also over. Merely because of attachment not raised by the concerned Authorities, even after the alleged period, that cannot take away the constitutional right of the petitioner. Even assuming that attachment is still available and enforceable and the same is valid only in respect of claim of enforceable attachment. However, the sale is always subject to enforceable claim.

5. In view of the above, this Court hereby direct the 4th respondent to register the sale deed, dated 28.11.2022 within a period of one week from the date of receipt of copy of this order. With the above direction, this writ petition stands disposed of. No costs.

03.09.2024

NCC : Yes/No
Index : Yes/No
PNM



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N.SATHISH KUMAR, J.

PNM

ORDER IN

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