



W.P(MD)No.14339 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14339 of 2024

Gowri

... Petitioner

Vs.

1.The Inspector General of Registration,
Door No.100, Santhome High Road,
Foreshore Estate, Pattinapakkam,
Chennai - 600 028.

2.The Joint Sub Registrar No.II,
Periyakulam,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records pertaining the impugned refusal check slip in RFL/Joint Sub Registrar No.II, Periyakulam / 37/2024 dated 26.06.2024 passed by the second respondent and quash the same and consequentially directing him to register the settlement deed dated 01.03.2024 executed in favour of the petitioner.

For Petitioner : Mr.J.Barathan

For Respondents : Mrs.D.Farjana Ghoushia,
Spl. Government Pleader.



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ORDER

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Heard the learned counsel for the writ petitioner and the learned Special Government Pleader for the respondents.

2.The petitioner's mother executed the petition mentioned sale deed in favour of the petitioner. It was presented for registration. The registering authority took the stand that since the petitioner's mother had already mortgaged the property in favour of one Mari Selvi for a sum of Rs.16,00,000/- (Document No.3211/2024), the settlement deed cannot be registered. To this effect, the impugned refusal check slip was issued. Challenging the same, the present writ petition came to be filed.

3.As rightly pointed out by the learned counsel for the petitioner, the issue raised in this writ petition is no longer *res integra*. A learned Judge of this Court in the decision reported in **2021 2 LW 546 (Abilasha Vs. District Registrar (Admin))** had held as follows:-

“7. Every mortgagor of an equitable mortgage by deposit of title deed is required to be registered as per the amendment as far as the State of Tamil Nadu is concerned. Therefore, no certificate is required from



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mortgagor to get a certificate from the bank with regard to the deposit of the title deed with the bank. Similarly, the circular nowhere indicate that a mortgagor should get a No Objection Certificate from the bank for executing a settlement deed. No Objection Certificate or letter from the concerned bank for executing a settlement deed is not required by any statute. Every mortgagor has got the right of equity of redemption and that the said right is transferable and there is no statutory bar for a person or a mortgagor to deal with the property subject to the mortgage. The right of mortgagor is not affected by this settlement. In the present case, the petitioner himself has disclosed the mortgage that was executed by the petitioner indicating that the property is mortgaged to the bank. The petitioner's mother was asked to redeem the mortgage with the bank.”

4.The learned counsel for the petitioner draws my attention to the relevant provisions of the Transfer of Property Act, 1882. From the statutory scheme underlying Chapter IV of the Transfer of Property Act, 1882, one can come very easily come to the conclusion that the transferee from a mortgagee will take the transfer subject to the right to foreclosure of the mortgagee (conferred under Section 66 of the Transfer of Property Act, 1882). The subsistence of mortgage cannot in any way come in the way of effecting transfer by the mortgagor. In fact, the proviso to Chapter IV clearly envisages such transfer being made. The impugned stand of the registering authority is patently unsustainable. The impugned refusal check slip is quashed. The



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petitioner is permitted to re-present the document. It shall be received, registered and released subject to fulfilment of other usual formalities.

5.The writ petition is allowed accordingly. No costs.

01.07.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

1.The Inspector General of Registration,
Door No.100, Santhome High Road,
Foreshore Estate, Pattinapakkam,
Chennai - 600 028.

2.The Joint Sub Registrar No.II,
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G.R.SWAMINATHAN, J.

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