



W.P.(MD)No.14502 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.14502 of 2023
and W.M.P.(MD)No.12343 of 2023

P.Kalaiyarasi

... Petitioner

Vs.

1.The District Registrar,
Sivagangai District.

2.The Sub Registrar,
Mathagupatti,
Sivagangai District.

3.Kala

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings in Na.Ka.No.191/2022 dated 09.01.2023 of 2nd respondent and O.Mu.No.1873/A1/2023 dated 19.04.2023 of 1st respondent and quash the same and consequently direct the respondents 1 and 2 to register sale deed dated 13.06.2022 presented by petitioner kept as Document No. P-11/202 and release the same.



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For Petitioner : Mr.V.R.Shanmuganathan
For Respondents : Mr.P.Subbaraj,
Spl. Govt. Pleader for R1 & R2
Mr.A.Muralikumar for R3

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings in Na.Ka.No.191/2022 dated 09.01.2023 of 2nd respondent and O.Mu.No. 1873/A1/2023 dated 19.04.2023 of 1st respondent and quash the same and consequently direct the respondents 1 and 2 to register sale deed dated 13.06.2022 presented by petitioner kept as Document No. P-11/202 and release the same.

2. Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent and perused the materials available on record.

3. It is the case of the petitioner that the petitioner has purchased 3/4th undivided share under a registered sale deed dated 13.06.2022 and when the petitioner presented the said sale deed for registration, the 2nd respondent vide



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proceeding dated 09.01.2023, had returned the same on the ground that a civil suit in O.S.No.234 of 2022 is pending. Challenging the said refusal order dated 09.01.2023, the petitioner has preferred an appeal before the 1st respondent. The said appeal was rejected by proceedings dated 19.04.2023 as belated. Challenging the same, the present Writ Petition has been filed.

4. The learned counsel appearing for the third respondent would submit that in the civil suit in O.S.No.234/2002, preliminary decree has already been passed determining the right of the parties and the said suit is now at the stage of passing final decree. At this stage, some portion of property in the suit cannot be sold. Therefore, the respondents have correctly passed the impugned orders. Hence, opposed this Writ Petition.

5. Considering the facts and circumstances of the case, this Court is of the view that as far as the sale of undivided share of the co-owner is concerned, there cannot be any prohibition. Section 44 of the Transfer of Property Act, 1882, permits such sale of undivided share by the co-owner. However, the purchaser cannot seek for possession based on the said purchase of undivided share and the purchaser has a remedy to file a suit for partition. In such view of the matter, since



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the mere registration will not take away the right of the co-owner, the impugned orders are liable to be quashed.

6. Accordingly, this Writ petition is allowed and the impugned order of the 2nd respondent dated 09.01.2023 and the impugned order of the 1st respondent dated 19.04.2023 are quashed. The respondents 1 and 2 are directed to register the sale deed dated 13.06.2022 presented by the petitioner, within a period of fifteen days from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.09.2024

NCC : Yes/No
Index : Yes/No

vsm



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Sivagangai District.
- 2.The Sub Registrar,
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