



W.P(MD)No.23531 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P(MD)No.23531 of 2024

and

W.M.P.(MD)No.19921 of 2024

Kannan

... Petitioner

Vs.

The Sub-Registrar,
Thiruppuvanam, Sivagangai District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned refusal Check Slip dated 19.09.2024 in No.18/2024 issued by the respondent and quash the same and consequently, to direct the respondent to register the document dated 04.09.2024 executing the sale deed in favour of the petitioner within the time stipulated by this Court.

For Petitioner : Mr.V.Sasikumar

For Respondent : Mr.C.Satheesh,

Government Advocate

ORDER

By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.



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2.Challenge has been made to the refusal check slip issued by the respondent dated 19.09.2024.

3.It is the grievance of the petitioner that when he presented the sale deed dated 04.09.2024, which is executed in favour of him, it was refused by the respondent, vide refusal check slip dated 19.09.2024 on the ground that no objection certificate is to be obtained from the mortgagee. Challenging the same, the petitioner has filed this Writ Petition.

4.The issue raised in this Writ Petition is no longer *res-integra*, in view of the judgment rendered by this Court in the case of ***Subramani vs. the Sub Registrar and others*** [WP.No.11056 of 2024, dated 26.04.2024], in which it has been held as follows:

“e. As far as the refusal based on the existence of mortgage, it is now settled that once the encumbrance is made by creating a mortgage, the mortgagor is not prohibited from effecting any further transfer. Section 56 of Transfer of Property Act, 1882 deals with the marshalling by subsequent purchaser. The Division Bench of this Court in the case of N. Ramayee v Sub-Registrar, reported in (2020) 6 CTC 697, in paragraphs 29 & 30 has held as follows:

“29. Section 56 of the Transfer of Property Act deals with marshalling by subsequent purchaser. The above provision also makes it clear that when the owner of two or more properties mortgages them to one person and then sells one or more of the



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properties to another person, the buyer is in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties. The above provision also makes it clear that though there were mortgages already created there is no bar for subsequent transfer of the property. But subsequent transfer is subject to the mortgage earlier created.

30. Section 57 of the Transfer of Property Act deals with the Provision by Court for encumbrances and sale freed therefrom. The Section also makes it clear that even the properties already encumbered can be brought under court sale and the encumbrance can be freed after issuance of notice to the encumberer.”

5.In such view of the matter, the refusal made by the respondent cannot be sustained in the eye of law. Therefore, the same is liable to be quashed, accordingly, it is quashed. This Writ Petition is allowed with a direction to the respondent to register the document presented by the petitioner, within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

01.10.2024

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

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N.SATHISH KUMAR, J

Yuva

To
The Sub-Registrar,
Thiruppuvanam, Sivagangai District.

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