



W.P(MD)No.26212 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P(MD)No.26212 of 2024

Seethalakshmi

... Petitioner

Vs.

The Sub Registrar,
Ettayapuram, Thoothukudi District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned refusal check slip issued by the respondent in Refusal No.RFL/Ettayapuram/54/2024, dated 23.10.2024 and quash the same as illegal and consequently, to direct the respondent to register the gift deed dated 23.10.2024 within a time frame fixed by this Court.

For Petitioner : Mr.R.J.Karthick

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. According to the petitioner, when she presented the gift deed dated 23.10.2024, which is executed by the petitioner and her sisters in respect of their shares in Survey Nos.15/8, 152/1B, 162/1, 165/2, 165/6, 166/3B, 162/3, 163/1 and 162/3, situated at Kadalaiyur Village, Ettayapuram Taluk, Thoothukudi District in favour of another sister, namely, Ulagandeswari, for registration, the respondent, vide refusal check slip dated 23.10.2024, has refused to register the same on the ground that there is a mortgage in respect of the properties in question in favour of TNSPL 53 Kadalaiyur Primary Agricultural Co-operative Bank Ltd., Kadalaiyur and original document has not been produced. Challenging the same, the petitioner has filed this Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the mortgage has already been wiped out. However, the receipts have not been registered.

4. At the outset, this Court is of the view that mere existence of the mortgage cannot be a ground for refusing the registration. Even assuming that the mortgage is still operating, any subsequent transaction is always subject to



the earlier mortgage. This issue 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 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.”



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5.As far as the ground that original document has not been produced is concerned, this issue 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:

“c. With regard to the refusal on the absence of parent document, this Court in the case of K.S. Vijayendran v. The Inspector General of Registration reported in (2011) 2 LW 648, Lakshmi Ammal v. The Sub Registrar, Villivakkam reported in 2015 SCC OnLine Mad 5868 and C. Moorthy v. Sub Registrar Aruppukottai reported in 2018 SCC OnLine Mad 3898, it was held that absence of a parent document is no ground to refuse registration. Pursuant to these judgments, sub-rule XX was introduced in Rule 162 authorizing the Sub-Registrar to refuse registration for non-production of the original title deed as required by Rule 55-A. This Court in the case of Federal Bank v Sub-Registrar, reported in 2023 2 CTC 289 has held that Sub-Rule XX of Rule 162 has no statutory backing. The said order has been followed by a Division Bench of this Court in the case of M. Ariyanatchi v Inspector General made in W.A.(MD).No. 856 of 2023, dated 27.06.2023, wherein, Division Bench of this Court has held that, for instance, the original document is held by one co-owner, the Sub-Registrar can always take an undertaking or a declaration in the form of an affidavit from the vendors to the effect that the original document is with the said person and register the document. Hence, the Sub-Registrar cannot refuse to register a document merely because the original parent deed has not been produced.

Considering the above settled position of law, the Registrar cannot refuse to register the document merely on the ground of non production of parent document.”



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6.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.

30.10.2024

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

Yuva

To
The Sub Registrar,
Ettayapuram,
Thoothukudi District.



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N.SATHISH KUMAR, J

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