



W.P (MD).No.27304 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2024

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P (MD).No.27304 of 2024

and

W.M.P(MD)No.23132 of 2024

M.Uthayakumar

... Petitioner

Vs.

1.The District Registrar,
Madurai District,
Madurai.

2.The Sub-Registrar,
Thiruppuvanam,
Sivagangai District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned refusal check slip in RFL/Thiruppuvanam/22/2024 on the file of the second respondent dated 29.10.2024 and quash the same and further direct the second respondent to register the sale deed dated 16.10.2024 without insisting any No Objection Certificate from the Mortgage.

For Petitioner : Mr.K.Chengiz Khan

For R1 & R2 : Mr.M.Sarangan
Additional Government Pleader



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also died and the said properties title derived by the petitioner and other legal heirs. They intended to sell the subject property and executed a sale deed in favour of the third party on 16.10.2024 for valid sale consideration and presented for registration. However, it was refused to register on the ground that the subject property was already mortgaged and the said mortgage is not yet redeemed sofar. Therefore, the petitioner was directed to obtain No Objection Certificate from the mortgagee.

5. Admittedly, there is no rival claim and the petitioner's grand-father availed loan. Subsequently, entire loan was repaid by the legal heirs and derive title over the property. According to the petitioner, whereabouts of the mortgagee not known and as such, they could not able to redeem the mortgage deed. That apart, the mortgage deed was executed on 25.10.1978 and it has been lapsed since 30 years of period has already been expired. That part, even assuming that the mortgage deed is alive, as per the first proviso of Section 55(A) of the Tamil Nadu Registration Rules (2022), the registering authority can entertain the registration if the right of mortgagee crosses the limitation period to file the suit. Admittedly, the mortgage deed of the year 1978 and the statutory limitation period of 30 years also expired. As per first proviso of Rule 55(A) of the Tamil Nadu Registration Rules, 2022 the registering authority



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should insist for No Objection Certificate only when the time limit to file the mortgage suit is not lapsed.

6. In this regard, this Court, in **W.P.11056 of 2024, dated 26.04.2024**

in the case of **Subramani Vs. Sub-Registrar and others**, has 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.”

That apart, the first proviso to Rule 55-A of the T.N Registration Rules, 2000 had inserted which authorises the registrar to refuse the document until the limitation period for redeeming the mortgage has expired. This Court in the case of Federal Bank v Sub-Registrar, reported in 2023 2 CTC 289, has already declared the first proviso to Section 55-A as ultravires the powers under the Act, as it runs counter to the substantive provisions of law viz., Sections 48 and 56 of the Transfer of Property Act. When the Rule under the Registration Act cannot override the statutory provisions of the Transfer of Property, it is not open to the SubRegistrar to refuse registration citing the existence of a mortgage or lease since the Transfer of Property, which is the substantive law permits such transfer despite the earlier mortgage is created and lease is executed.

In N.Ramayee's case (cited supra), the Division Bench



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of this Court, in paragraph 30 has held as follows:

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.

Therefore, any Rule inserted to undo the law declared by this Court without any statutory backing cannot be sustained in the eye of law."

7. The above judgment is squarely applicable to the case on hand and as such, the respondents ought not to have refused to register the sale deed on the ground of non-furnishing of No Objection Certificate from the mortgagee in respect of the subject property.

8. In view of the above, the impugned refusal check slip cannot be sustained and is liable to be quashed. Accordingly, the impugned refusal check slip dated 29.10.2024 is hereby quashed. The petitioner is directed to re-present the sale deed for registration. On receipt of the same, the second respondent is directed to register the sale deed presented by the petitioner and release the document forthwith.



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9. Accordingly, this writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

Internet : Yes

Index : Yes/No

Speaking/Non Speaking order
am

14.11.2024

To

1.The District Registrar,
Madurai District,
Madurai.

2.The Sub-Registrar,
Thiruppuvanam,
Sivagangai District.



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G.K.ILANTHIRAIYAN, J.

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