



W.P.(MD)No.28911 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.12.2024**

CORAM:

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

W.P.(MD)No.28911 of 2024

and

W.M.P(MD)No.24492 of 2024

Muniyasamy

... Petitioner

/Vs./

1.The District Registrar,
Ramanathapuram,
Ramanathapuram District.

2.The Sub-Registrar,
Muthukulathur Sub Registrar Office,
Ramanathapuram District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Refusal Check Slip No.RFL/முதுகுளத்தூர்/83/2024, dated 18.11.2024 issued by the second respondent and quash the same as illegal and consequently direct the second respondent to entertain the sale deed dated 18.11.2024 presented by the petitioner for registration and register the same in accordance with law.



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For Petitioner : Mr.R.Venkatesalu

For Respondents : Mr.M.Sarangan

Additional Government Pleader

ORDER

This writ petition has been filed challenging the refusal check slip issued by the second respondent, dated 18.11.2024 on the ground that already the subject property has been leased out in favour of the third party and there is an endorsement in the Encumbrance of the subject property.

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

3. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

4. The property comprised in Survey No.344/6A under patta No. 807 to an extent of 0.17.50 hectare and survey No.344/7A, Patta No.807 to an extent of 0.12.50 hectare situated at Thiruvakki Village,



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Muthukulathur Taluk, Ramanathapuram District was owned by one Ganesan and 2 others. They had mortgaged the subject property for a sum of Rs.1600/- for a period of three years on 26.04.1982 and it was registered vide document No.527/1982, subsequently, it was not redeemed sofar. For which, the subject property can be enjoyed by the mortgagee for a period of three years. It is impliedly understood that after a period of three years, the entire mortgage itself come to an end and the subject property was handed over to the petitioner's father. It is nothing but an usufructuary mortgage. Therefore, the petitioner's vendor cannot be redeemed the subject property. That apart, it was executed on 26.04.1982.

5. It is relevant to extract Section 62 of the Transfer of Property Act, 1882.

"62. Right of usufructuary mortgagor to recover possession.— In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property 4 [together with the mortgagedeeds and all documents relating to the mortgaged property which are in the possession or power of the mortgagee],— (a) where the mortgagee is authorised to pay himself the mortgage-money from the rents and profits of the property.—when such money is paid: (b) where the



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mortgagee is authorised to pay himself from such rents and profits 5 [or any part thereof a part only of the mortgage -money],—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee 6 [the mortgage-money or the balance thereof] or deposits it in Court as hereinafter provided."

6. Accordingly, the mortgagor was a right to recover the possession of the property from the mortgagee. When the term prescribed for the payment, which was already received by the mortgagee has expired.

7. In the case on hand, a sum of Rs.1600/- was paid to the mortgagor, for which, subject land was handed over to the mortgagee for the possession and enjoyment for three years. That part, the term of mortgage also got expired since 30 years period has already been expired from the date of said usufructuary mortgage.

8. In view of the above, absolutely, there is no impediment for the registering authority to register the document, which was presented for registration by the petitioner.



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9. In view of the above, this Court finds infirmity in the order passed by the third respondent, dated 18.11.2024 and it cannot be sustained and liable to be quashed.

10. Accordingly, the order of the second respondent dated 18.11.2024 is quashed and the writ petition is allowed. The petitioner is directed to represent the sale deed for registration before the second respondent and on receipt of the same, the second respondent is directed to register the sale deed and release the document forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

03.12.2024

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

- 1.The District Registrar,
Ramanathapuram,
Ramanathapuram District.
- 2.The Sub-Registrar,
Muthukulathur Sub Registrar Office,
Ramanathapuram District.



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G.K.ILANTHIRAIYAN, J.

am

Order made in
W.P.(MD)No.28911 of 2024

Dated:
03.12.2024