IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-08-2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WP No. 29206 of 2025

S.Jayalatha

Petitioner(s)

Vs

1.The District Registrar (Admn)
Dharmapuri, Dharmapuri Town.

2.The Sub Registrar
Dharmapuri West, Dharmapuri.

Respondent(s)

PRAYER

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made in Na.Ka.No.425/2024 dated 03.12.2024 issued by the 2nd respondent quash the same and consequently direct the 2nd respondent to delete or neutralize the entry in the encumbrance certificate relating to the time barred simple mortgage deed dated 09.05.1997 (Doc.No.1009/1997) in line with the legal principle laid down in N.Ramayee v. Sub Registrar, Vazhapadi (2020 6 CTC 697 [DB]) by considering petitioner's representation 27.11.2024.

For Petitioner(s): Mr.N.Manoharan

For Respondent(s): Mr.U.Baranidharan SGP

ORDER

The present writ petition is filed praying for a writ of certiorarified mandamus challenging the impugned order dated 03.12.2024 issued by the 2nd respondent and consequently direct the 2nd respondent to delete or neutralize the entry in the encumbrance certificate relating to the time barred simple mortgage deed dated 09.05.1997 (Doc.No.1009/1997).

2. It is submitted by the learned counsel for the petitioner that petitioner's mother, Tmt. Andalammal, was the owner of the subject property measuring an extent of 1750 Sq.ft. comprised in SF.No.262/2B, situated at Vella Goundenpalayam Village, Dharmapuri Town vide settlement deed dated 06.04.1997 registered as Doc.No.370 of 1997. During her life time, petitioner's

mother executed a mortgage deed dated 09.05.1997 in favour of Mr.R.A.Janakiraman as security towards loan of Rs.25,000/-. Though the loan was repaid in the year 1999, the mortgage deed was not cancelled.

3. It is further submitted that petitioner's parents executed a joint 'Will' dated 03.07.2000, bequeathing their properties in favour of their three sons and one daughter/petitioner. Accordingly, subject property was bequeathed in favour of petitioner, her husband, Dr.Sundaravadhanam and her son, Vignesh Ram. The petitioner's father constructed a five-floor building on the property between 1982 and was running a lodge till 2002, building was in dilapidated condition and demolished in 2024.

4. It is submitted that petitioner's father died on 15.01.2002 and her mother died on 06.01.2005. Later, petitioner's husband also died on 22.08.2014. Thereafter, petitioner and her son, Vignesh Ram have become the absolute owners of the subject property. After demolishing the super-structure in the year 2024, they sought a bank loan for reconstruction. The bank informed them

about the entry relating to mortgage deed in the encumbrance certificate. Petitioner submitted a representation dated 27.11.2024 before the respondents to delete the entry relating to a time-barred simple mortgage deed dated 09.05.1997 (Doc.No.1009/1997). The 2nd respondent has passed an order declining to delete the entry on the ground that there is no provision in the Registration Act for the removal of a registered document from the Register of Deeds. Hence, the petitioner filed the present writ petition before this Court.

5. The learned counsel for the petitioner also placed reliance on the judgment passed by the Hon'ble Division Bench of this Court in the case of ***N.Ramayee vs. Sub Registrar, Registration Department and Another*** reported in ***2020 SCC Online Mad 5231***, wherein, the Hon'ble Division Bench of this Court held as follows:

> *"37. It is also pertinent to note that even if transfer is made during a pending suit, such transfer is not void but is subject to the result of the suit. Section 53 of the Transfer of Property Act, deals with fraudulent transfer. Even such fraudulent transfer is made with intent to defeat*

or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Even in such cases the rights of transferee in good faith and for consideration is protected.

38. 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. ***<u>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.</u>***

39. 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.*

40. It is also relevant to note that even a mortgage is a transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. Therefore, it cannot be said that once the encumbrance is made by creating a mortgage, the mortgagor is totally prohibited from effecting any further transfer. In fact if any such transfer is made, it is always subject to the mortgage alone. If the analogy is drawn from the judgement of the single judge in W.P.No.33601 of 2019 [Venkattamma vs. The Sub~Registrar and another] that agreement once registered there cannot be any subsequent settlement deed is accepted, such situation even may lead to the contention that even where a simple mortgage is created, the mortgagor cannot transfer the property for any other purpose even for a lease, even though lease is just transfer of right to enjoy the property. The judgement of the learned single Judge in W.P.No.33601 of 2019 [Venkattamma vs. The Sub~Registrar and another] holding that unless there is declaration declaring the *agreement for sale is null and void is obtained from civil court no further transfer could be registered, which is, in our view, not according to law. It is also to be noted that in the above case only agreement for sale was registered. It is relevant to extract Section 54 of the Transfer of Property Act:*

> *“54. □Sale□ defined.□□Sale□ is a transfer of ownership in exchange for a price paid or promised or part~paid and part~promised. Sale how made.□ 3Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. 1In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale.□A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on*

such property."

47. It is also brought to our notice about the new circular in No. 24011/C1/2020 dated 08.10.2020. It is the contention of the learned Additional Advocate General that the Registrar has power to regulate the registration in order to prevent fraud and hence, the Registrar is having powers under the Registration Act to regulate the registration and the right to refuse the document and that such power is available under Section 71 of the Registration Act. Such contention is not acceptable for the simple reason that the circular bars transfer of property on the ground that when a lease is already executed in respect of the property, without expiry of the lease, transfer cannot be permitted or without consent of lessee no registration is permissible. Further, insisting a no objection from mortgagee before registration is also against the very substantive provision of law. If any property is sold with existing mortgage, the transferee steps into the shoes of mortgagor. He has the right to redeem the property by paying the mortgage money. Therefore in *the name of regulating the registration, any circular which is in the nature of violating the substantive provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law. If the contention of learned Advocate General that without seeking declaration and cancellation of the agreement of sale, subsequent agreement or transaction cannot be registered, is accepted then such restriction, in fact, infringes the very Constitutional right of the citizen provided under Article 300 A of the Constitution.*

48. We are of the view that except as provided in the Registration Act and any other statute, the Registrar has no power to refuse to register a document. Though the object of the Act is to prevent fraud, such occasion arises only where some private properties are notified under the Tamil Nadu Private Forest Act. In such case, sale of such property without permission of the Collector of the District is void. Only when such notification is available in respect of any property, the Registrar can verify whether the sanction of the Collector is obtained or not. Similarly, *whenever properties have been declared as forest land or elephant corridor, etc., and the notification is available with the Registrar, based on the above notification he can exercise power. Except the above, the Registrar has no power to refuse to register the document."*

6. The learned Special Government Pleader appearing on behalf of the respondents would submit that there is no provision in the Registration Act for the removal of a registered document from the Register of Deeds, except through another registered document. He would further submit that though the 2nd respondent lacks the authority to neutralize or delete the entry regarding the mortgage deed in the records, the Sub Registrar/authority will proceed with registering any sale deed or conveyance deed presented for the subject property, if it is otherwise in order.

7. Taking into consideration the facts and circumstances of the case and considering the materials placed before this Court, this Court is inclined to direct the respondents to proceed with the registration of the settlement deed as and when it is submitted, keeping in view of the principles laid down by this Court in ***N.Ramayee's*** case (cited *supra*), which states that the existence of a mortgage deed, even if it is still valid ("alive"), may not be a bar to any subsequent registration.

8. With the above directions, the Writ Petition stands disposed of. No costs.

11-08-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

Jeni

To

1.The District Registrar(Admn)
Dharmapuri, Dharmapuri Town.

2.The Sub Registrar
Dharmapuri West, Dharmapuri.

MOHAMMED SHAFFIQ J.

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