



W.P.(MD)No.1567 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.01.2025

CORAM:

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

W.P.(MD)No.1567 of 2025

M. Karpagavalli

... Petitioner

/Vs./

The Sub Registrar
Sub Registrar Office,
Ottapidaram,
Thoothukudi - 628 401.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling the records relating to the proceedings of the Respondent made in RFL/Ottapidaram/93/2024 dated 19.12.2024 and quash the same and consequently direct the respondent to register the Sale Deed dated 19.12.2024 in respect of property comprised in 69.16 cents Punjai Land in Survey No. 173/3 in Puthiyamputhur Village, Ottapidaram Taluk, Thoothukudi District, within the time framed by this Court.

For Petitioner : Mr.K.Chinraj

For Respondent : Mr.M.Sarangan

Additional Government Pleader



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ORDER

This writ petition has been filed challenging the refusal check slip dated 19.12.2024, thereby refused to register the sale deed, which was presented for registration by the petitioner.

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

3. The property comprised in S.No.173/3, to an extent of 69.19 cents situated at Puthiyamputhur village, Ottapidaram Taluk, Thoothukudi District, belonged to one Samuvel Nadar, by way of registered sale deed dated 30.09.1969 vide document No.1562/1969 from one Rathinasamy Nadar. Thereafter, the said Samuvel Nadar had mortgaged the said property by way of mortgage deed dated 17.06.1975 vide document No.661/1975 in favour of the petitioner's father, viz., Manikampillai and borrowed loan to the tune of Rs.1,500/- with interest at the rate of 9% per annum. The said Samuvel Nadar failed to redeem



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the mortgage deed by repaying the entire loan amount. The mortgagee, namely, the petitioner's father died on 11.11.1995 and the petitioner is being the sole legal heir of the said Manikampillai, had executed a sale deed in favour of third party in respect of the subject property and presented the sale deed for registration. However, it was refused to register by the respondent on the ground that the sale deed stands in the name of Samuvel Nadar and the patta stands in the name of one Rathinasamy Nadar.

4. The learned counsel for the petitioner would submit that as per the mortgage deed, the specific condition is that to redeem the mortgage within a period of one year from the date of mortgage, ie. 19.06.1975. However, the mortgagor failed to redeem the mortgage and it is also barred by limitation. Article 148 of the Limitation Act, 1908, which prescribes sixty years period of limitation for suits against mortgagees to redeem or to recover possession of immoveable property, which was mortgaged. The corresponding provision in the Limitation Act, 1963 is Article 61(a) which provides that the period of limitation for a suit by a mortgagor to redeem or recover possession of the immovable property



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mortgaged is 30 years. Therefore, 49 years over and as such the mortgagor lost his right and the mortgage would become entitle to continue in possession.

5. To support of his contention, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court reported in **2006-4-SCC-484 (Prabhakaran V. M.Azhagiri Pillai)**.

6. On perusal of the mortgage deed dated 17.06.1975, it is only a simple mortgage. The possession of the subject property was not handed over to the mortgagee. In case of a usufructuary mortgage, where the mortgagor delivers possession of the mortgaged property in favour of the mortgagee, then the limitation comes to rescue. The mortgagee to deal with the property as the full owner. The judgment cited by the learned counsel for the petitioner is applicable arising out of whether mortgage and as such it is no way helpful to the case on hand, since the said Samuvel Nadar executed simple mortgage deed in favour of the petitioner's father and no possession of the subject property was handed over to the mortgage.



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7. Therefore, the petitioner ought to have approach the civil Court for appropriate relief to claim title over the property. Hence, as on today, the petitioner had no title over the property to deal with the subject property. Hence, the respondent rightly refused to register the sale deed, which was presented for registration by the petitioner and this Court finds no infirmity or illegality in the order passed by the respondent. Hence, this Writ Petition is liable to be dismissed and accordingly, this Writ Petition stands dismissed. No costs.

22.01.2025

Index : Yes / No
NCC : Yes / No
LS

TO:-

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G.K.ILANTHIRAIYAN, J.

LS

Order made in
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