



W.P.(MD) No.4074 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2025

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD) No.4074 of 2022

Dr.P.Paul Devanesan

... Petitioner

Vs.

1.The Area Manager,
LIC Housing Finance Ltd.,
Jeevan Jothi LIC Building 1st Floor,
No.3, West Marret Street,
Madurai - 625 001.

2.K.Alagammal

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of a Writ of Mandamus directing the first respondent to return the original title deeds, which were submitted to the first respondent towards the Housing Loan in A/c.No.21240027027 to the petitioner.

For Petitioner : Mr.A.Srinivasan

For R1 : M/s.Gopika
for M/s.Polex Legal Solution

For R2 : Mr.I.Sriharisuriya



W.P.(MD) No.4074 of 2022

WEB COPY

ORDER

This Writ Petition seeks for a Writ of Mandamus directing LIC Housing Finance Limited to return the documents that were submitted by the writ petitioner in relation to the Housing Loan in Loan Account No. 21240027027, and for a consequential order.

2. The writ petitioner had married the second respondent on 16.06.1995. The writ petitioner is a Christian and the second respondent is a Hindu. The marriage was neither registered under the Special Marriage Act, 1954, nor under the Christian Marriage Act, 1872. The writ petitioner and the second respondent started living as husband and wife, believing their marriage to be valid. From the wedlock, two children were born to the couple. One is a daughter and the other is a son. Both have attained the age of majority. On account of disputes and differences, the parties separated.

3. The writ petitioner presented a suit in O.S.No.71 of 2006 before the Subordinate Court at Devakottai for declaration and for recovery of possession from the second respondent. The said suit was decreed as

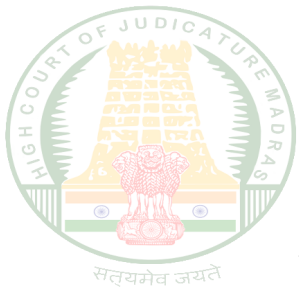


W.P.(MD) No.4074 of 2022

prayed for on 28.02.2008. On an appeal in A.S.No.22 of 2008 filed by the

second respondent before the District Court at Sivagangai, one of the issues framed by the Court was whether the marriage is valid, and another important issue was whether the writ petitioner is entitled to recovery of property from the second respondent. The court answered the first issue in favour of the writ petitioner and answered the other issue in favour of the second respondent, i.e., the court declared the marriage between the writ petitioner and the second respondent as null and void but dismissed the suit for recovery of possession, holding that the second respondent is the co-owner of the property; therefore, the question of recovery of possession from the co-owner does not arise. The second appeal filed before this Court was dismissed, confirming the judgment of the first appellate court. The special leave petition filed before the Hon'ble Supreme Court was unsuccessful.

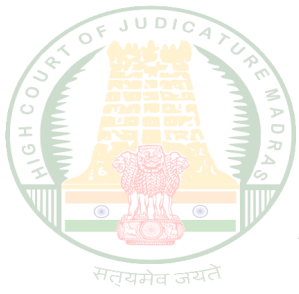
4. Therefore, the position of law that has been declared by the first appellate court is that, there is no matrimony in existence between the writ petitioner and the second respondent, and that the writ petitioner and the second respondent are co-owners of the property purchased by them.



W.P.(MD) No.4074 of 2022

5. When the relationship between the writ petitioner and the second respondent was hunky-dory, they had approached the first respondent for a loan. A loan of Rs.8,00,000/- was also issued. The writ petitioner has extinguished the loan in favour of the first respondent. Thereafter, the writ petitioner sought for the return of documents in Loan Account No. 21240027027. The first respondent decided to play an additional role in litigation between the writ petitioner and the second respondent. It came up with a plea that both the writ petitioner and the second respondent had to approach the first respondent and only then, the documents should be released. This constrained the writ petitioner to approach this Court by way of this Writ Petition.

6. When the matter came up for hearing yesterday, I heard Mr.A.Srinivasan appearing for the petitioner and M/s.Gopika for M/s.Polex Legal Solution, appearing for the first respondent. I requested M/s.Gopika to find out from her clients whether they would be willing to return the documents to the writ petitioner upon his execution of a deed of indemnity in favour of the first respondent, assuring and indemnifying the first respondent from any claims that may be made by the second respondent against the first respondent. I adjourned the matter to today.



W.P.(MD) No.4074 of 2022

7. Today, when the matter is taken up for hearing, M/s. Gopika submits that the first respondent has conveyed to her that they have no objection to releasing the documents in favour of the writ petitioner, if a deed of indemnity is executed by the writ petitioner in favour of the first respondent, indemnifying it from any claims that may be made by the second respondent with regard to this loan account against the first respondent.

8. Mr.I.Sriharisuriya for the second respondent pleads that there is a decree declaring that the writ petitioner and the second respondent are co-owners, and on the basis of the release of the documents, the second respondent will be dispossessed from the property.

9. Mr.A.Srinivasan for the writ petitioner states that his client will give the deed of indemnity, as suggested by the first respondent.

10. I have carefully considered the submission on either sides.

11. The creditor, who is strengthened by a mortgage, is entitled to the documents as long as the debt exists. Once the debt has been



W.P.(MD) No.4074 of 2022

extinguished, the creditor does not have the right to retain the documents

and must return the same to the owner or the co-owner, as the case may

be. It cannot take advantage of the fact that there is litigation between the parties, which is pending or has been disposed of. By virtue of the decree

of the first appellate court in A.S.No.22 of 2008, dated 04.08.2008, it is

clear that the writ petitioner and the second respondent are co-owners of the property. The second respondent has not approached the first

respondent for the release of the documents. The writ petitioner

approached the first respondent, but the first respondent has denied the

benefit of the documents to the writ petitioner for reasons set forth above.

It is not the duty of the creditor to intervene in the dispute between the writ petitioner and the second respondent.

12. In light of the above discussion, I dispose of this Writ Petition on the following terms:

- i. The writ petitioner shall execute a Deed of Indemnity on stamp paper in favour of the first respondent, stating that he shall indemnify and keep the first respondent free from any claims that may be raised by the second respondent against the first respondent for the release of documents in Loan Account No. 21240027027.



W.P.(MD) No.4074 of 2022

WEB COPY

- ii. On execution of the Deed of Indemnity, the first respondent shall hand over the documents to the writ petitioner.
- iii. The mere fact that the writ petitioner is in possession of the documents does not mean that he can take forcible possession from the second respondent.
- iv. It is open to the writ petitioner and the second respondent to initiate appropriate civil proceedings for partition and such other relief, as may be advised, and to pursue the same before the civil court.
- v. No costs.

04.02.2025

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

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Copy To:

The Area Manager,
LIC Housing Finance Ltd.,
Jeevan Jothi LIC Building 1st Floor,
No.3, West Marret Street,
Madurai - 625 001.



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W.P.(MD) No.4074 of 2022

V.LAKSHMINARAYANAN, J.

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W.P.(MD) No.4074 of 2022

04.02.2025