



W.A(MD)No.2009 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.07.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A(MD)No.2009 of 2025
and
C.M.P(MD)No.11610 of 2025**

M.Shiek Alavutheen

... Appellant /
2nd Respondent

Vs.

1.The Sub Registrar,
Ayyampettai Sub Registrar Office,
Thanjavur District.

... 1st Respondent /
1st Respondent

2.Deen Mohamed

... 2nd Respondent /
Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to allow this Writ Appeal by setting aside the order passed by this Court in W.P(MD)No. 15947 of 2025 dated 25.06.2025.

For Appellant : Mr.A.S.Vaigunth

For Respondents : Mr.S.Kameshwaran
Government Advocate for R.1



W.A(MD)No.2009 of 2025

JUDGMENT

(By G.R.SWAMINATHAN, J.)

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Heard both sides.

2.The appellant herein was figured as the second respondent in W.P(MD)No.15947 of 2025. The said writ petition was filed by the second respondent herein / Deen Mohamed challenging the refusal check slip issued by the registering authority. The learned single Judge allowed the writ petition in the following terms:

“2.The 1st respondent has stated that earlier a sale agreement, dated 09.09.2022, was registered in Document No. 1553 of 2022. When the said sale deed is in existence, the present sale deed cannot be registered. The said reasoning of the 1st respondent is absolutely erroneous. Since the agreement of sale is registered only based on the mandatory statutory provisions, the same cannot give any right or title over the property for the agreement holder. Therefore, the said reasoning of the 1st respondent is erroneous and non application of mind.

3.Therefore, the impugned order is quashed and the 1st respondent is directed to register the sale deed presented by the petitioner within a period of four weeks from the date of receipt of a copy of this order.”



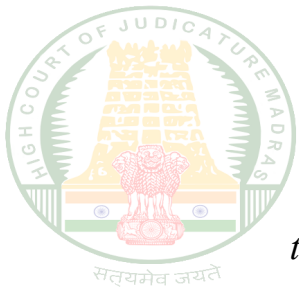
W.A(MD)No.2009 of 2025

WEB COPY 3. The appellant is an agreement holder. It has been held by the Hon'ble Division Bench of this Court in the decision reported in **2020 (6) CTC 697 (N.Ramayee Vs. The Sub Registrar, Registration Department, Salem)** as follows:-

“37. 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.

...

46. 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



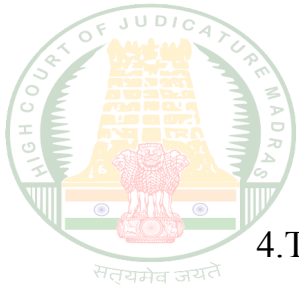
WEB COPY



W.A(MD)No.2009 of 2025

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.”

The order of the learned single Judge is sustained.



W.A(MD)No.2009 of 2025

4.This Writ Appeal stands dismissed. There shall be no order as to costs.

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Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [K.R.S., J.]
25.07.2025

NCC : Yes / No

Internet : Yes / No

Index

MGA

To

The Sub Registrar,
Ayyampettai Sub Registrar Office,
Thanjavur District.



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W.A(MD)No.2009 of 2025

G.R.SWAMINATHAN, J

and

K.RAJASEKAR, J.

MGA

W.A(MD)No.2009 of 2025

25.07.2025