

Mani vs The Sub Registrar on 1 July, 2024

Author: N. Sathish Kumar

Bench: N. Sathish Kumar

WP.No

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.17049 of 2024
and W.M.P.No.18791 & 18794 of 2024

Mani

Versus

The Sub Registrar
Office of the Sub Registrar
Pallipalayam, Erode District

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari or Mandamus, calling for the review of the order pertaining to impugned order of passed by the respondent in Refusal Slip No.RFL/Pallipalayam/38/2024 dated 22.05.2024 thereby refusing to register the document and quash the same as illegal incompetent and without jurisdiction and further direct the respondent to register the Sale Deed dated 22.05.2024 presented by petitioner.

For Petitioner : Mr.S.Arivazhagan

For Respondent : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

ORDER

Challenge has been made to the refusal slip issued by the respondent dated 22.05.2024 refusing to register the sale deed dated 22.05.2024.

<https://www.mhc.tn.gov.in/judis>

2. It is the case of the writ petitioner that when the petitioner presented the sale deed dated 22.05.2024, the respondent issued the refusal checkslip mainly on the ground that in respect of the

same survey number, some undivided shares were already purchased by co-operative society. Therefore, seeks a direction to get No objection certification from the earlier purchaser.

Hence, this writ petition.

3.As the impugned order is against the very settled position of law and sheer non application of mind, with the consent of both parties, this writ petition is taken up for final disposal in the admission stage itself.

4. In substantive provisions of law, there is no bar for the co-owner to sell the undivided share which is dealt under Section 44 of the Transfer of Property Act, 1882. Therefore, directing the parties to get No objection certificate from the earlier purchaser does not arise at all. This Court is of the view that the refusal order has been passed mechanically. It is relevant to point out that this Court in the case of Subramani vs. The Sub Registrar and another made in W.P.No.11056 of 2024 by order dated 26.04.2024 has held as follows:

“8. It is relevant to note that the powers of the Sub <https://www.mhc.tn.gov.in/judis> Registrar is governed by the provisions of the Registration Act. Therefore, he has to perform the duty strictly in terms of the power conferred by the Registration Act.

9. Rule 162 of the Registration Rules set out various circumstances under which the Registrar may refuse to register the document. Rule 162 of the Registration Rules reads as follows:

"162. When registration is refused the reasons for refusal shall be at once recorded in Book 2. They will usually come under one or more of the heads mentioned below---

I. Section 19.---That the document is written in a language which the Registering Officer does not understand and which is not commonly used in the District, and that it is unaccompanied by a true translation and a true copy.

II. Section 20.---That it contains unattested interlineations, blanks, erasures or alterations which in the opinion of the Registering Officer require to be attested. III. Section 21.---(1) to (3) and Section 22.-- That the description of the property is insufficient to identify it or does not contain the information required by Rule 18. IV. Section 21(4).---That the document is unaccompanied by a copy or copies of any map or plan which it contains. V. Rule 32.---That the date of execution is not stated in the document or that the correct date is not ascertainable. VI. Sections 23, 24, 25, 26, 72, 75 and 77.---That it is presented after the prescribed time.

<https://www.mhc.tn.gov.in/judis> VII. Sections 32, 33, 40 and 43.---That it is presented by a person who has no right to present it.

VIII. Section 34.---That the executing parties or their representatives, assigns, or agents have failed to appear within the prescribed time.

IX. Sections 34 and 43.---That the Registering Officer is not satisfied as to the identity of a person appearing before him who alleges that he has executed the document.

X. Sections 34 and 40.---That the Registering Officer is not satisfied as to the right of a person appearing as a representative, assign, or agent so to appear. XI. Section 35.---That execution is denied by any person purporting to be an executing party or by his agent. Note:-When a Registering Officer is satisfied that an executant is purposely keeping out of the day with a view to evade registration of a document or has gone to a distant place and is not likely to return to admit execution within the prescribed time, registration may be refused the non-appearance being treated as tantamount to denial of execution. XII. Section 35.---That the person purporting to have executed the document is a minor, an idiot or a lunatic. Note:-When the executant of a document who is examined under a commission under Section 38 of the Act is reported by the Commissioner to be a minor, an idiot or a lunatic registration may be refused and it is not necessary that the Registering Officer should personally examine the executant to satisfy himself as to the existence of the disqualification. <https://www.mhc.tn.gov.in/judis> XIII. Section 35.---That execution is denied by the representative or assign of a deceased person by whom the document purports to have been executed.

Note:-When some of the representatives of a deceased executant admit and others deny execution, the registration of the document shall be refused in toto, the persons interested being left to apply to the Registrar for an enquiry into the fact of execution.

XIV. Sections 35 and 41.---That the alleged death of a person by whom the document purports to have been executed has not been proved. XV. Section 41.---That the Registering Officer is not satisfied as to the fact of execution in the case of a will or of an authority to adopt presented after the death of the testator or donor.

XVI. Sections 25, 34 and 80.---That prescribed fee or fine has not been paid.

XVII. Section 230(A) of the Income Tax Act, 1961 (Act 43 of 1961).--That the prescribed certificates from the Income Tax Officer has not been produced.

XVIII. Section 10 of the Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961 (Act 58 of 1961).---That the declaration has not been filed by the transfer. XIX. Section 27 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Act 24 of 1978).---That the statement has not been filed by the transferror and transferee.”

10. Upto Sub-Rule XVII of Rule 162 of the Registration Rules are traceable to substantive provisions in the Registration <https://www.mhc.tn.gov.in/judis> Act, the remaining XVII, XVIII & XIX traceable to other laws like Income Tax Act, Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961 & Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

11. Rule XX has been incorporation in view of the Rule 55A of the Registration Rules. This Court in the case of Federal Bank v. Sub-Registrar reported in 2023 2 CTC 289 has held that Sub-Rule XX of Rule 162 as unenforceable as it is without any statutory backing. Other than the Rule 162, Sections 22-A & 22- B of the Registration Act authorises the refusal of the document. Section 22-A authorises the refusal in three types of cases.

12. Now, the refusal slips have been invariably issued on the basis that a) failure to produce chitta, adangal, FMB sketch, patta, b) title has been disputed by third party, c) absence of parent document, d) letters from the Police, e) existence of mortgage deed, f) undervaluation, g) not obtaining the No Objection Certificate from the Lessee and sometimes, refusal is also made on the ground that Court Decree presented outside the timelimit prescribed under Section 23 of the Registration Act. There are instances where the refusal slip are issued on the basis of attachment made by the Commercial Taxes Department particularly when the Sale Certificate is sought to be registered.

13. These refusal slips have been issued based on the <https://www.mhc.tn.gov.in/judis> circular issued by the authorities either under Section 68(2) or Section 69 of the Registration Act. It is relevant to note that Sections 68 and 69 confers power upon the Registrar of superintendence and control all the acts of the Sub-Registrar. Sub-Section 2 of Section 68 empowers the Registrar to issue any order consistent with the Act, which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him. Similarly, the Registrar shall also have power to issue any order consistent with the Act in respect of any act or omission of any subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered. The above power empowering the Registrar to issue any order is a power of superintendence and supervision. Therefore, relying upon Section 68(2) of the Registration Act, 1908 and issuing such circular cannot be valid in the eye of law. Similarly, Section 69 deals with the power of Inspector General to superintend registration offices and make rules. Therefore, this Court is of the view that the circular cannot override the statutory provisions of law. The Division Bench of this Court in the case of N. Ramayee v Sub- Registrar, reported in (2020) 6 CTC 697 has elaborately dealt the powers of the Registrar. The Division Bench was constituted on a reference. This Court has elaborately discussed with the various power of the Registrar in refusing the document and held that except the powers conferred to the Registrar under Rule 162 of the Registration Rules, they cannot cancel the <https://www.mhc.tn.gov.in/judis> document. The judgment is also confirmed by the Hon'ble Supreme Court in SLP (Civil) 4844 of 2021.

14. Now, this Court once again deals with the powers of the Registrar while entertaining the document. It is relevant to note that in a judgment reported in the case of Reconstruction Co. (India) Ltd. v. S.P. Velayutham, reported in (2022) 8 SCC 210, the Hon'ble Supreme Court has held that the registration of a document comprises of three essential steps (a) execution of the document (b) presentation of the document for registration and (c) the act of registration. Where a challenge is

laid to the execution and the presentation, the remedy is only before the competent civil court. The Hon'ble Supreme Court in paragraph 54 has held as follows:

“54. In cases where a suit for title is filed, with or without the relief of declaration that the registered document is null and void, what gets challenged, is a combination of all the aforesaid three steps in the process of execution and registration. The first of the aforesaid three steps may be challenged in a suit for declaration that the registered document is null and void, either on the ground that the executant did not have a valid title to pass on or on the ground that what was found in the document was not the signature of the executant or on the ground that the signature of the executant was obtained by fraud, coercion, etc. The second step of presentation of the document and admitting the execution of the same, may also be challenged on the very <https://www.mhc.tn.gov.in/judis> same grounds hereinabove stated. Such objections to the first and second of the aforesaid three steps are substantial and they strike at the very root of creation of the document. A challenge to the very execution of a document, is a challenge to its very DNA and any defect or illegality on the execution, is congenital in nature. Therefore, such a challenge, by its very nature, has to be made only before the civil court and certainly not before the writ court.”

15. As far as the act of the registration is concerned, while exercising the power under Sections 34 & 35 of the Act, the law has been now well settled that the Sub Registrar before and while registering the document is not deciding any lis between parties. The function of the Sub Registrar under Sections 34 & 35 of the Registration Act is only executive and not quasi judicial in character. The Division Bench of this Court in the case of *Park View Enterprises v Government of Tamil Nadu*, reported in AIR 1990 Mad 251 has held as follows:

“79. The next contention is that the Sub-’ Registrar is a, quasi- judicial authority and therefore, no instruction could be issued to him pertaining to his powers of registering a document under Part VI of the Registration Act. This act of the Sub-Registrar is only an executive work. He does not decide a ‘lis’ between the executants. As will be shown hereunder, he has got limited functions to discharge. Sections 34 and 35 pertain to what he can do, relating to; registration of a document. If every aspect <https://www.mhc.tn.gov.in/judis> pertaining to registration is duly complied with by the executants of documents; on proper presentation; his only act is to affix the seal and carry out the registration procedure. He does not pass a considered order.” The above judgment is approved by the Hon'ble Supreme Court in the case of *Satya Pal Anand v. State of M.P.*, reported in (2016) 10 SCC 767, wherein, the Hon'ble Supreme Court has held as follows:

“Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him

is incidental, to ascertain that there is no violation of provisions of the 1908 Act. In *Park View Enterprises* [*Park View Enterprises v. State of T.N.*, AIR 1990 Mad 251 : 1989 SCC OnLine Mad 273] it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition.”

16. In view of the law declared by the Hon'ble Supreme Court, it is clear that the Sub-Registrar while performing his duties under Sections 34 & 35 of the Registration Act is not <https://www.mhc.tn.gov.in/judis> discharging any quasi-judicial functions. Therefore, the Sub Registrar while performing the statutory function to register documents has no power of adjudication as he merely performs an executive act.

17. Though the Registration Act also give certain powers to the Sub-Registrar to refuse certain document, such refusal is permissible only when the document comes within the ambit of Rule 162 of the Registration Rules. As already indicated above, Rule 55-A is also held as unenforceable since it is without any statutory backing [*Federal Bank v. Sub-Registrar* reported in 2023 2 CTC 289]

18. Similarly, Rule 162 also permits refusal on certain grounds when the document evidences bonded labour or embodies a transaction constituting an offence under law etc. Therefore, only those category of documents, the Sub Registrar has power to refuse the document. It is also relevant to note that Section 22-A was introduced vide T.N Amendment Act 2 of 2009 with effect from 20.10.2016 and 22-B was introduced vide T.N Second Amendment Act 41 of 2022 with effect from 16.08.2022.

19. Section 22-A authorizes the refusal in three types of cases. (i) where the land belongs to the State Government or local authorities (ii) belongs to any endowment covered by the T.N Hindu Religious and Charitable Endowments Act, 1959 (iii) <https://www.mhc.tn.gov.in/judis> land which is donated for BhoodanYagna vested in the Tamil Nadu State Bhoodhan Yagna Board (iv) or is a property belonging to a Waqf which is under the superintendence of the Waqf Board under the Waqf Act, 1995. Without any prior sanction issued by the competent authority provided under the Religious Act or by any authority authorised by the State Government for this purpose, the Sub-Registrar cannot refuse the registration. The second category under Section 22-A (2) relates to the transfer of ownership of lands converted to house sites without permission for the development of such land by the planning authority. In such cases, the only exception is where it is shown that the same house site is previously registered as a house site, in which case there is no bar for registration. The third category under Section 22-A (3) is where the Registrar can refuse to register a unilateral cancellation of a sale deed.

20. It is relevant to note that many registration has been refused citing Section 22-A on the only ground that some requests are made by Hindu Religious and Charitable

Endowments Board or the Waqf Board. It is relevant to note that the Division Bench of this Court in the case of *Sudha Ravikumar v The Special Commissioner* reported in AIR 2017 Mad 203, wherein, it is held as follows:

“the registering authority is not bestowed with any quasi- judicial function to hold a roving enquiry in respect of the title to the property. But he has to hold a summary enquiry for the <https://www.mhc.tn.gov.in/judis> limited purpose of satisfying himself that the document deserves to be registered. Such enquiry is neither judicial nor quasi- judicial.”

21. Similarly, this Court in the case of *D. Kalaiyarasan v Inspector General* reported in (2018 SCC Online Mad 7224), it was held that unless and until the authority has clinching materials to show that the property belonged to the religious institution, the registration cannot be refused. Also, this Court in the case of *G. Rajasulochana v Inspector General* made in W.P 29706 of 2024 dated 16.04.2024, it was observed as under:

“If there is a serious dispute on the title to the land, such questions cannot be decided by the Registrar at the stage of registering a document since he is only conducting a limited summary enquiry.”

22. Therefore, this Court is of the view that merely on the basis of some letters without production of title deed clinchingly establish the title of the Waqf Board and religious institutions mere citing some objections in the form of letters, document cannot be refused to be registered.

23. Similarly, this Court has also come across various instances of refusal of documents citing that road has been formed in the particular survey number, therefore, it should be treated as house sites, even though the agricultural land is <https://www.mhc.tn.gov.in/judis> sought to be transferred. This Court is of the view that merely because some portion of the land in particular survey number sold as house sites earlier, when the remaining land remained as an agricultural land and no layout has been formed in the survey number with the approval of the competent authorities, merely because some portion of the land is sold earlier as house sites, there is no bar for registering agricultural lands.

24. As far as the unilateral cancellation of the settlement is concerned, the law is well settled that unilateral cancellation of gift deed or sale deed cannot be valid in the eye of law. Full Benches of this Court in the case of *Sasikala vs. Revenue Divisional Officer cum Sub Collector* and another made in W.P.(MD).Nos.6889 of 2020 etc., batch cases dated 02.09.2022 and also in the case of *Latif Estates v Hadeeja Ammal* reported in (2011) 2 Mad LJ 569 held that unilateral cancellation of settlement or sale deed not permissible.

25. As far as Section 22-B is concerned, the same gives power to the registering authorities to refuse the registration when the document is (a) a forged document (b) a document relating to a transaction prohibited by a Central or State Act or

(c) where a document relates to the transfer of immovable property which is attached provisionally or permanently by a competent authority under a State or Central Act. The scope of enquiry as regards a ground under Section 22-B has been fully <https://www.mhc.tn.gov.in/judis> considered in the case of G. Rajasulochana vs Inspector General made in W.P 29706 of 2024 dated 16.04.2024. Only the documents falling within the ambit of forged document namely false document within the meaning of Section 464 of the Indian Penal Code, registration of such document can be refused not every fraudulent transaction. There is no difficulty in respect of 2nd category of document under Section 22-B of the Registration Act. When any transaction which is prohibited by Central or State Acts, there is no difficulty in refusing to register the document since the law prohibits such transaction. The difficulty arises only with regard to the 3rd category.

26. It is relevant to note that there are some instances noticed by this Court where the attachment in a money suit relating to the year 1998 for a sum of Rs.20,000/-. When the document was presented in the year 2004, the same has been refused mainly on the ground that attachment has not raised. It is relevant to note that Section 64 of CPC makes it clear that any private alienation after attachment is void as against all claims enforceable under the attachment. The Hon'ble Supreme Court in the case of M. Marathachalam Pillai v. Padmavathi Ammal reported in (1971) 3 SCC 878 has held that the sale is only void against all other claims enforceable under the attachment and it is not void generally. Therefore, this Court is of the view that merely on the basis of some attachment reflected in the encumbrance, it is the duty of the registering authorities to make <https://www.mhc.tn.gov.in/judis> summary enquiry as to the nature of the claims under the attachment. For example, if the attachment is for a sum of few lakhs of rupees over several crores of properties, it cannot be said that owner of the property cannot deal with the property forever. If such interpretation is given, in fact, it will take away the constitutional right of a person to hold the property. If the attachment is for a fewer amount and the value of the property is more, the document can be registered with the entry that the attachment prevail over against all the claims enforceable under the attachment so that subsequent purchaser will be put on notice.

27. Similarly, a Division Bench of this Court in the case of K. Balachandran v A.M MuthyyanMudaliar reported in (1974) 87 LW 812, held as follows:

“It is abundantly clear that neither S. 64 of the Code nor the corresponding provision in the earlier enactments made private alienation void for all purposes. S. 64 specifically says that the transaction is void only as against all claims enforceable under the attachment. As pointed out in the first of the cases quoted above a private

alienation when an attachment is in force is, not void against the whole world.”

28. This Court has also come across many cases where the attachment would have been reflected in the entry, subsequently, the suit get compromised or settled out of court, however, by <https://www.mhc.tn.gov.in/judis> inadvertence or omission, the attachment would not have been raised. Such case, if any material has been produced to show that attachment is already raised or the entire suit has been settled between the parties, that also can be taken note of by the registering authorities while registering the document.

29. Now, it has become a routine practice of the Sub Registrar to refuse the registration citing ground that are outside the purview of the Registration Act. Despite such judicial pronouncement, refusal of registration is made citing internal circular of the department under the pretext that judgment of this Court are confined to the facts of the case. It is relevant to note that it is not open to the registering authorities to interpret the judgment and decide whether the facts applies to the particular case or not. Such interpretation could be made only by the Courts and not the Sub-Registrar. A recent judgment of the Hon'ble Supreme Court in the case of *Pernod Ricard India Private Limited v The State of Madhya Pradesh* reported in 2024 INSC 327, has held as follows:

“The Court has the function of authoritatively construing legislation, that is, determining its legal meaning so far as is necessary to decide a case before it. This function is exclusive to the Court, and a meaning found by any other person, for example, an authorising agency, an investigating agency, an executing agency, a prosecuting agency, or even the legislature itself, except when intending to declare or amend the law, is <https://www.mhc.tn.gov.in/judis> always subject to the determination of the court.” Therefore, mere circulars or other administrative instructions of the Inspector General of Registration interpreting the provisions of law cannot be sustained in the eye of law.

30. The Hon'ble Supreme Court in the case of *Keshavji Ravji & Co. v. CIT*, reported in (1990) 2 SCC 231 has held as follows:

“The task of interpretation of the laws is the exclusive domain of the courts.” Therefore, the authorities under the Registration Act cannot issue self-styled rules which run counter to the substantive provisions of law and the principles settled by the Courts in interpreting the provisions of the Registration Act.

31. Now, this Court has to point out settled position of law in various aspects. With regard to the refusal slips issued on the ground of a. failure to produce chitta, adangal, FMB sketch, patta is concerned, this Court in the case of *The Trust for Education and Rehabilitation of Disabled Orphans and Destitutes represented by its Managing Trustee v. The Inspector General of Registration, Chennai* reported in

2002 (1) MLJ 244 has held that Sub-Registrar cannot refuse registration on the ground that the document is not accompanied by a Chitta, Adangal or FMB sketch etc. Similarly, in the case of Jesupalam vs Registrar <https://www.mhc.tn.gov.in/judis> reported in 2015 SCC Online Mad 7660, it was held that the Sub-Registrar cannot refuse registration on the ground that the document is not accompanied by a Chitta, Adangal or FMB sketch etc. Therefore, when the Constitutional Courts interpreted the provisions of the Registration Act and laid a law, wherein, the Inspector General of Registration is also a party, issuing the circular contrary to the above judgment to produce patta, chitta, adangal cannot be sustained in the eye of law.

b. refusal on the ground of title dispute, in a judgment of this Court in the case of Abdullasa v Inspector General of Registration reported in 2021 2 CWC 451, this Court held that the Registrar cannot refuse to register the document on the basis of objections raised by a rival claimant, who has a different source of title. Similarly, the Hon'ble Apex Court in the case of Satya Pal Anand v. State of M.P., reported in (2016) 10 SCC 767 has held that an enquiry into the title of the executant is beyond the powers of the Sub-Registrar. Therefore, in view of the law declared in this regard, merely on the ground of protest petitions and objections raised by some third party, the document cannot be refused to be registered.

c. With regard to the refusal on the absence of parent document, this Court in the case of K.S. Vijayendran v. The Inspector General of Registration reported in (2011) 2 LW 648, Lakshmi Ammal v. The Sub Registrar, Villivakkam reported in <https://www.mhc.tn.gov.in/judis> 2015 SCC OnLine Mad 5868 and C. Moorthy v. Sub Registrar Aruppukottai reported in 2018 SCC OnLine Mad 3898, it was held that absence of a parent document is no ground to refuse registration. Pursuant to these judgments, sub-rule XX was introduced in Rule 162 authorizing the Sub-Registrar to refuse registration for non-production of the original title deed as required by Rule 55-A. This Court in the case of Federal Bank v Sub-Registrar, reported in 2023 2 CTC 289 has held that Sub- Rule XX of Rule 162 has no statutory backing. The said order has been followed by a Division Bench of this Court in the case of M. Ariyanatchi v Inspector General made in W.A.(MD).No. 856 of 2023, dated 27.06.2023, wherein, Division Bench of this Court has held that, for instance, the original document is held by one co-owner, the Sub-Registrar can always take an undertaking or a declaration in the form of an affidavit from the vendors to the effect that the original document is with the said person and register the document. Hence, the Sub-Registrar cannot refuse to register a document merely because the original parent deed has not been produced.

Considering the above settled position of law, the Registrar cannot refuse to register the document merely on the ground of non production of parent document.

d. As far as the refusal based on the letters from the police is concerned, this Court in the case of R. Madhupriya v Inspector General of Registration reported in 2020 SCC Online <https://www.mhc.tn.gov.in/judis> Mad 20112 has held that the practice of police officers issuing letters to the Sub-Registrar's asking them to refrain from registering documents has been consistently deprecated. In such cases, it is for the aggrieved party to obtain appropriate orders from the civil court instead of using the police machinery to prevent the Registrar from performing his

statutory functions. Such view of the matter, merely on the basis of some communication from the police officials, the Registrar has no power to refuse the registration.

e. As far as the refusal based on the existence of mortgage, it is now settled that once the encumbrance is made by creating a mortgage, the mortgagor is not prohibited from effecting any further transfer. Section 56 of Transfer of Property Act, 1882 deals with the marshalling by subsequent purchaser. The Division Bench of this Court in the case of N. Ramayee v Sub-Registrar, reported in (2020) 6 CTC 697, in paragraphs 29 & 30 has held as follows:

“29. 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 <https://www.mhc.tn.gov.in/judis> 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.

30. 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.” That apart, the first proviso to Rule 55-A of the T.N Registration Rules, 2000 had inserted which authorises the registrar to refuse the document until the limitation period for redeeming the mortgage has expired. This Court in the case of Federal Bank v Sub-Registrar, reported in 2023 2 CTC 289, has already declared the first proviso to Section 55-A as ultravires the powers under the Act, as it runs counter to the substantive provisions of law viz., Sections 48 and 56 of the Transfer of Property Act. When the Rule under the Registration Act cannot override the statutory provisions of the Transfer of Property, it is not open to the Sub-Registrar to refuse registration citing the <https://www.mhc.tn.gov.in/judis> existence of a mortgage or lease since the Transfer of Property, which is the substantive law permits such transfer despite the earlier mortgage is created and lease is executed.

In N.Ramayee's case (cited supra), the Division Bench of this Court, in paragraph 30 has held as follows:

30. 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.

Therefore, any Rule inserted to undo the law declared by this Court without any statutory backing cannot be sustained in the eye of law.

f. Now, there are instances that Sub-Registrar is simply refusing to register the document on the ground that the property has been undervalued. It is relevant to note that when the document is not valued properly, in N.Ramayee's case (cited supra), in paragraph 19 has held as follows:

“19. It is also relevant to note that even when the document is undervalued and the Registrar registering the document has reason to believe that the market value of the property has not been truly set out in the document, he has to receive the document and refer the same to the Collector for determination of the market value of such property and the <https://www.mhc.tn.gov.in/judis> proper duty payable thereon as per Section 47-A of the Stamp Act. Even on such ground also the Registrar has no right to refuse to register the document.” Therefore, the refusal of registration on the ground of undervaluation cannot be valid in the eye of law.

g. Similarly, No objection sought to be obtained when the lease is in existence in respect of the immovable properties. The said issue is also elaborately dealt by the Division Bench of this Court in N.Ramayee's case, wherein, in paragraph 38, it is held as follows:

“38. 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 <https://www.mhc.tn.gov.in/judis> 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.” Therefore, requiring no objection is not at all warranted for registering the document with existing lease.

h. As far as the refusal of registration of Court decrees outside the time limit presentation under Section 23 is concerned, this Court in the case of Sathiyamoorthy v Sub- Registrar reported in (2023) 4 CTC 287 condemned the practice of the Sub-Registrar in citing the provisions of Section 23 of the Registration Act holding that a circular in Na.Ka. No.34930/C1/2019, dated 27.2.2023, was eventually brought out in light of this decision holding that the time limit under Section 23 would not apply to a Court decree. Therefore, the refusal on the ground of delay in respect of registering Court decree cannot be sustained in the eye of law.

<https://www.mhc.tn.gov.in/judis> i. With regard to the attachment made by some department when the sale certificate issued under SARFAESI Act, 2002 is concerned, it is well settled that a Full Bench of this Court in the case of Assistant Commissioner (CT) v. I. O. B. reported in (Mad)[FB], 2017 1 MLJ 769 and two Division Benches in the case of Tamil Nadu Mercantile Bank Limited v. The Joint-I Sub Registrar Office, Madurai reported in [2021] 1 WLR 462 (DB) and State Bank of India v Sub Registrar, reported in 2023 SCC Online Mad 3179 (DB), have already held that the auction purchaser would get the property free from all encumbrances which includes the claim of any statutory authority like the Commercial Taxes Department. Such view of the matter, when the sale certificate sought to be registered, any attachment existing will have no significance. On that ground also, the document cannot be refused to be registered.

j. The other ground on which refusal is also made casually is citing the pendency of the suit. The said issue is also elaborately dealt by the Division Bench of this Court in N.Ramayee's case, wherein, in paragraph 28, it is held as follows:

28. 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 <https://www.mhc.tn.gov.in/judis> 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.” Therefore, mere citing the pendency of the suit also the document cannot be registered.”

5. Accordingly, the impugned refusal checkslip is set aside and there shall be a direction to the respondent to register the sale deed dated 22.05.2024 presented by the petitioner. Such exercise shall be completed within a period of one week from the date of receipt of a copy of this Order.

6. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petition are closed. No costs.

dhk
Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

To,

The Sub Registrar
<https://www.mhc.tn.gov.in/judis>

Office of the Sub Registrar
Pallipalayam, Erode District

N. SATHISH KUMAR, J.

<https://www.mhc.tn.gov.in/judis>

dhk

01.07.2024

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