



W.A.(MD)No.1702 of 2024

WEB COP BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.A.(MD)No.1702 of 2024
and
C.M.P.(MD)Nos.13128 and 13129 of 2024

1.Kumaresan, S/o.Thangaiah Nadar
2.P.Sudha ... Appellants

-vs-

1.C.Govindan

2.The District Registrar,
Nagercoil Registration District,
Integrated District Registrar Office,
Nagercoil,
Kanyakumari District.

3.The Sub-Registrar,
Sub-Registrar Office,
Eraniel,
Kaniyakumari District.

4.Mary Micheal Ammal, W/o.Joseph Raj ... Respondents



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PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 07.08.2024, passed in W.P.(MD)No.17455 of 2021, on the file of this Court.

For Appellants : Mr.S.C.Herold Singh

For R2 and R3 : Mr.M.Siddharthan
Additional Government Pleader

JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

There is no merit in this Writ Appeal.

2. The entire issue has arisen due to the callousness and audaciousness exhibited by the Registration Department of the State Government. A sale deed that was executed on 06.08.2004, was presented for registration, but the Sub Registrar, Eranial at Kanniyakumari District, kept it pending due to an attachment of 7 cents out of 20 cents of the property.

3. The purchaser then approached the Civil Court for raising the attachment, but, the petition came to be dismissed. An appeal was taken out against the said order in C.M.A.No.28 of 2016 and the said appeal was allowed



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on 18.08.2017 and the disputed extent of 7 cents were conveyed in favour of the first appellant. A challenge made to the said order in C.M.S.A.(MD)No.8 of 2018, failed. Thereafter, when the document was sought to be registered, the same Sub Registrar refused to register it, citing that the property had been dealt with subsequently. The Writ Court relied on Section 47 of the Registration Act, 1908, which states that once a document is registered, it takes effect from the date of its execution. Section 22-A of the Registration Act, 1908, enables the Sub Registrar to refuse registration on the ground that an attachment is in force. It was introduced only with effect from 16.08.2022. Therefore, on the date when the document was presented for registration, there was no such prohibition.

4. The substantive law regarding attachment, as outlined in the Code of Civil Procedure, 1908, does not prohibit the sale of attached property. Section 64 of the Code of Civil Procedure, 1908, deals with private alienation of property, after it has been attached, and it reads as follows:-

"64. Private alienation of property after attachment to be void.



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(1) *Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.*

(2) *Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.*

Explanation.—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets."

5. A reading of the above provision makes it clear that a sale pending attachment is void only against claims enforceable under that attachment. If a person of normal mental capacity reads the provision, he / she will understand that an attachment does not prohibit alienation. However, the Sub Registrar, Eraniel, had chosen to read it as it contains prohibition on alienation at the time it was presented. It is this improper action by the Sub Registrar in keeping the



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WEB COPY document pending that paved the way for the creation of further documents by the person who sold the property. Indirectly, the Sub Registrar assisted the appellants in committing fraud against the first respondent. The learned Single Judge has taken note of the language in Section 64 of the Code of Civil Procedure, 1908 as well as the language in Section 47 of the Registration Act, 1908 and has rightly set aside the impugned order, and directed registration of the sale deed. We do not see any reason to interfere with the order of the learned Single Judge. The Writ Appeal fails and it is accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : No [R.S.M., J.] [L.V.G., J.]
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To:-

1. The District Registrar,
Nagercoil Registration District,
Integrated District Registrar Office,
Nagercoil,
Kanyakumari District.



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WEB C 2. The Sub-Registrar,
Sub-Registrar Office,
Eraniel,
Kaniyakumari District.



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