

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-02-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

WP No. 4176 of 2025

1. M.Gunasekaran
S/o.Muthumanickam, Vellayankottayur,
Karimangalam Taluk, Dharmapuri
District.

Petitioner(s)

Vs

1. The District Registrar
Department Of Registration,
Government Of Tamilnadu, Integrated
Complex, Salai Vinayagar Koil Street,
Dharmapuri-636 701 Dharmapuri
District.

2.The Sub Registrar
Department Of Registration,
Government Of Tamilnadu,
Karimangalam-635 111, Dharmapuri
District.

3.Praveen Raj
S/o.Srisivam, Vellayankottayur Village,

Karimangalam Taluk, Dharmapuri
District.

Respondent(s)

PRAYER

Writ petition filed under Article 226 of constitution of India for the issue of writ of Mandamus directing the 2nd respondent to delete the entry relating to petitioners land comprised in S.No.571/1A1 in Karimangalam village, Karimangalam Taluk, Dharmapuri District, made on the basis of the order in I.A. No.1 of 2023 in O.S. No.238 of 2022 dated 31.10.2023 on the file of the Additional District Judge at Dharmapuri from the Encumbrance Register maintained by the 2nd respondent.

For Petitioner(s): S.Sucharitha

For Respondent(s): Mr.P.Harish,
Government Advocate for R1
and R2

ORDER

This writ petition has been filed for the issue of writ of Mandamus directing the 2nd respondent to delete the entry made in the encumbrance certificate relating to the property belonging to the petitioner based on the order passed in IA No.1 of 2023 in OS No.238 of 2023 dated 31.10.2024 on the file of the Additional District Judge at Dharmapuri.

2. When the matter came up for hearing on 12.02.2025, this Court passed the following order :-

The subject matter of controversy in the present writ petition pertains to the registration of an order passed by the Additional District Judge, Dharmapuri in I.A No.1 of 2023 in OS No.238 of 2022 dated 31.10.2023 wherein the application filed by the 3rd respondent seeking for the relief of temporary injunction pending the suit for specific performance was dismissed and this order has been registered as Document No.3186 of 2023 and the same is now creating problems to the petitioner to deal with the property.

2. In the considered view of this Court, the order passed by the concerned Civil Court does not create any right over the property for the 3rd respondent and inspite of the same, the order has been registered by the 2nd respondent. As a result, what the 3rd respondent was not able to achieve before the Civil Court has now been achieved by way of showing an encumbrance over the property.

3. The learned Special Government Pleader brought to the notice of this Court that such practice is continuing for quite some time and there are directions issued by this Court to the effect that even a certified copy of the plaint filed in the suit must be entertained

and registered by the registration department. The learned counsel submitted that if such registrations are entertained, the registration department will be flooded with complaints filed in various suits and those complaints by themselves do not create any right or title over the property. That apart, it is not an instrument as defined under Section 2(14) of the Registration Act. The learned Special Government Pleader also brought to the notice of this Court the order passed in WP No.16712 of 2024 dated 27.06.2024 in this regard.

4. This Court is inclined to consider the larger issue that has been raised in this writ petition. Hence, post this writ petition under the caption "For orders" on 27.02.2025 and the relevant judgements shall be placed before this Court.

3. The learned counsel for the petitioner submitted that the dismissal of an application filed for temporary injunction, does not create or limit or declare or extinguish any right, title or interest and therefore, the respondents ought not to have entertained the document and registered the same and made the entry in the encumbrance certificate.

4. The learned Special Government Pleader appearing on behalf of the respondents 1 and 2 fairly submitted that the 2nd respondent ought not to have entertained this order dismissing the application filed for interim

injunction and register the same. The learned Special Government Pleader submitted that the registration of a document or an instrument must be relatable to those which have been specifically identified under the Registration Act, 1908 and the Indian Stamp Act, 1899. Insofar as a document is concerned, the learned Special Government Pleader submitted that it has not been specifically defined under the Registration Act. But, however, to understand this term document, there is sufficient indication that is available under Section 17 and 18 of the Registration Act. He further submitted that ultimately, a document must create or declare or assign or limit or extinguish a right, title or interest in a property or in the absence of the same, it can not be treated as a document. Insofar as the term instrument is concerned, he submitted that the same is defined under Section 2(14) of the Indian Stamp Act, 1899. For proper appreciation, the said definition is extracted hereunder :-

2. Definitions.

(14) "Instrument".— "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded:

5. The learned Special Government Pleader also relied upon the Advanced law lexicon of P.Ramanatha Aiyar wherein it has been stated that a document under the Registration Act means a document which is legally enforceable.

6. The learned Special Government Pleader also placed reliance upon the definition of a document under Section 3(18) of the General clauses Act, 1897.

3. Definitions.

(18) “document” shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter;

7. Pointing out to all the available definitions and explanations, the learned Special Government Pleader submitted that the pleadings can never be brought within the term of a document or an instrument and therefore, the same cannot be made a subject matter of registration.

8. The learned Special Government Pleader also explained the flip side of entertaining such registration which will lead to the registration offices being flooded with pleadings and by mere registration of such pleadings, it will cause prejudice to the right of the owner of the property to deal with the property which will be reflected in the encumbrance certificate.

9. The learned Special Government Pleader also brought to the notice of this Court the order passed in WP [MD] No.25274 of 2024 dated 24.10.2024

wherein this Court had specifically held that there is no bar in dealing with the property during the pendency of the suit and at the best, such transaction will be governed by the Rule of *lis pendens*. In view of the same, it was contended that there is no need to entertain pleadings and register it as a document / instrument in the Sub registration office.

10. This Court has to take into consideration the two earlier orders that were passed. The first order was passed by Hon'ble Justice C Saravanan in CRP (NPD) No.1987 of 2014 dated 03.07.2019 and the relevant portions are extracted hereunder :-

63. Before parting, I would like to suggest a few changes to the prevailing practices which can be adopted to the benefit of everybody. It would be advisable as a prudent practice that in all proceedings relating to immovable property particularly in a suit for partition and/or for specific performance and in a suit for a declaration of title over immovable properties, the jurisdictional Sub- Registrar should be intimated about the pendency of the litigation and appropriate entry should be made in the registers regarding pendency of such litigation in a court proceeding so that it gets reflected in the Encumbrance Certificate. Such intimation should not be construed as an injunction but should merely serve an interest of piece of information to protect the purchasers who end up investing in such properties which are subject to litigations pendent lite as prospective purchases are not prohibited.

64. *This would not only discourage purchase of properties under litigation but also help the court to arrive at a proper conclusion as to whether the pendent lite purchase without permission of the Court was bona fide or not. If purchase is made of property under litigation, it would be calculated risk which the purchaser would have taken while making such purchase.*

65. *The Registrar General of this court is therefore directed to transmit a copy of this order to the Inspector General of Registration, Chennai with a covering letter to suitably direct all the jurisdictional Sub Registrars in the State to accept such entries to be made in the Register of property to reflect the same in the Encumbrance Certificate giving particulars of the pending proceedings in respect of immovable properties to enable a free flow of information regarding the status of property under litigation.*

66. *The Registrar General of this court also directed to issue an administrative circulars to all the courts within the jurisdiction of this High Court to insist on the plaintiff's in such suits to intimate the jurisdictional Sub- Registrars regarding pendency of the suit relating to immovable properties. This would not only weed out unnecessary litigations but also caution prospective buyers before buying properties which are subject matter of litigations.*

11. The learned Special Government Pleader submitted that till date no circular has been issued by the Inspector General of Registration to make any

entry in the records of the Sub-Registrar regarding the pendency of a litigation.

12. The next order to be taken note of is the order of Hon'ble Justice P T Asha in WP No.34182 of 2024 dated 13.12.2024 and the relevant portions are extracted hereunder :-

5. The plaint is not compulsory registrable under Section 17 of the Registration Act, 1908 and there is no bar under the statute for a Sub registrar to entertain and register and consequently, reflect the same in the encumbrance. Section 18 of the Registration Act, 1908 provides for optional registration of documents. On the basis of the above provisions the Petitioner is seeking registration of the plaint. The Order of this Court in the case of P.Natarajan vs. The District Registrar, Puducherry and others rendered in W.P.No.10116 of 2017 was a case where also a plaintiff sought registration of the plaint. The learned Judge referring to provisions of Section 18 of the Registration Act, 1908 issued directions to the Petitioner to submit fresh representation to the Respondents and on such application of the Petitioner therein before the registering authorities, the registering authorities were directed to pass orders thereafter. In the Judgement and Decree reported in 2019 6 MLJ 372, in the case of N.Rajaram vs. R.Murali and Others, the learned Judge had suggested after prima facie observing that, there appears to be a large scale collusion requiring a probe that, any

proceedings relating to immovable property particularly suits for partition and/or specific performance and suit for a declaration of title over immovable properties etc. should be intimated to the jurisdictional Sub-Registrar and appropriate entries made in the registers so that it gets reflected in the Encumbrance Certificate.

13. I had the advantage of going through both the orders. Both the learned Single Judges have presumably issued directions since there are many bonafide purchasers, who purchased properties without being aware of the pendency of a litigation and thereafter, they are put to grave prejudice. My mind is redolent with a oft quoted adage “hard facts makes bad law”.

14. It is a fact that there are numerous instructions where an innocent purchaser of the immovable property is not aware of a pending litigation and he purchases the property. The question is as to whether that can be a ground for the Court to issue directions to the registering authorities to register the pleadings in a case and to make necessary entry in the encumbrance certificate.

15. The registration of a document is governed by the Registration Act, 1908. In order to register a document, it must squarely fall within the requirements of the Act and nothing can be registered which goes beyond the scope of the Act. What is compulsorily registrable is dealt with under Section 17 of the Act and wherever registration is optional, it is dealt with under Section 18

of the Act. The advantages of registration was dealt with by the Apex Court in *[Suraj Lamp and Industries Private Limited Vs. State of Haryana and another]* reported in **2012 1 SCC 656** and the relevant portion is extracted hereunder :-

Advantages of Registration

15. In the earlier order dated 15.5.2009, the objects and benefits of registration were explained and we extract them for ready reference :

15. "The Registration Act, 1908, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration.

16 Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs. 100 and upwards to or in immovable property.

17. Section 49 of the said Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affected such property, unless it has been registered. Registration of a

document gives notice to the world that such a document has been executed.

18. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified."

Registration of documents makes the process of verification and certification of title easier and simpler. It reduces disputes and litigations to a larger extent.

16. It is now too well settled that a transfer of property is concerned primarily with transactions or Acts-in-law and whereas the, registration Act and the Stamp Act are concerned with documents or instruments only. Unless there is a document or an instrument, these two statutes will not have any application. The pleadings *per se* does not satisfy any of the requirements under Section 17 and/or 18 of the Registration Act. Similarly, the pleadings does not satisfy the requirements of the definition of an instrument under Section 2 (14) of the Stamp Act. If that is so, a Court through a judicial fiat cannot direct the registering authority to register the pleadings and make the necessary entries in the encumbrance certificate. Even though, such directions are well intended, it has a flip side to it.

17. As held above, such pleadings does not satisfy the requirements both under the Registration Act and under the Stamp Act and therefore, cannot be registered and entries cannot be made. That apart, if the owner of the property should be stopped from dealing with the immovable property, the easiest method to adopt will be to register the pleading before the Registration office and create an entry in the encumbrance certificate. Once that is done, the owner of the property will not be able to deal with the property since the purchaser would want that entry to be removed or deleted.

18. On the one hand, there are directions issued by this Court to register the pleadings in a suit and to make the necessary entry and on the other hand, this Court has also held that there is no bar to deal with the property during the pendency of the suit and at the best, such a transaction will only be hit by the Rule of *lis pendens*. Therefore, such contradicting views will only create more confusion instead of providing any solution.

19. In the light of the above discussion, this Court holds that the earlier directions issued in CRP NPD No.1987 of 2-14 dated 03.07.2019 is not in line with the provisions of the Registration Act and the Stamp Act and hence, must be held to be *per incuriam*. The subsequent order passed in WP No.34182 of 2024 dated 13.12.2024 has merely followed the earlier order.

20. This Court holds that pleadings that are filed in a civil suit does not assume the character of a document or an instrument and in such an event, the Registration Act and the Stamp Act will not come into play and consequently, pleadings cannot be entertained and registered and no entries can be made in the encumbrance certificate. In view of the same, the Inspector General of registration need not issue any circular in this regard.

21. The first principle that occupies the field viz., a transaction that takes place during the pendency of a suit will be governed by the rule of *lis*

pendens, it will continue to operate. Ultimately, it is for the legislature to bring about a necessary amendment in the registration Act and in the Stamp Act to deal with the situation and the Courts cannot issue directions which will run contrary to the existing provisions under the Registration Act and the Stamp Act.

22. In the result, this writ petition is allowed and there shall be a direction to the 2nd respondent to delete the entry that was made while entertaining the dismissal order in IA No.1 of 2023 in OS No.228 of 2022 dated 31.10.2023 on the file of Additional District Judge, Dharmapuri. This process shall be completed within a period of two weeks from the date of receipt of the copy of this order.

27-02-2025

rka

Index:Yes

Speaking Order

Internet:Yes

Neutral Citation:Yes

To

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Department Of Registration,
Government Of Tamilnadu, Integrated
Complex, Salai Vinayagar Koil Street,
Dharmapuri-636 701 Dharmapuri
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