

**THE CHIEF JUSTICE J.K. MAHESHWARI**

**AND**

**JUSTICE U. DURGA PRASAD RAO**

**WRIT APPEAL No. 190 of 2019**

**JUDGMENT:** *(Per J.K.Maheshwari, CJ)*

Sri A.V. Gopala Rao, learned counsel for the appellant.

The Government Pleader for Registration & Stamps for the respondents.

Being aggrieved by the order dated 07.03.2019 passed in W.P.No.507 of 2019 rejecting the writ petition filed by the appellant seeking relief against respondent No.4, who has not released the document Nos.P.248/2018 dated 29.06.2018 and P.249/2018 dated 30.06.2018 after registration of the sale deed and the mortgage deed pertaining to the appellant, and consequential direction to respondent No.4 to release the registered sale deed to the Power of Attorney Holder of the appellant, this writ appeal is filed.

The facts not in dispute are that one Muniamma is the vendor of the property and her son had filed a civil suit O.S.No.95 of 2018 which is pending in the District Court, Chittoor. In the said suit, on filing application by the son under Order 39 Rules 1 & 2 of CPC in I.A.No.260 of 2018, on 28.05.2018 the civil Court granted injunction restraining the vendor Muniamma from alienating or mortgaging or creating any encumbrance in favour of defendant No.2 therein or any other person, till disposal of the

main suit. The said order was made absolute on 25.07.2018, confirming the same.

In view of the said undisputed facts, it is apparent that the documents, to which the registration is sought, are of dated 29.06.2018 and 30.06.2018, subsequent to the interim injunction granted by the civil Court on 28.05.2018, which was made absolute by the civil Court vide order dated 25.07.2018. In the said suit, Muniamma, who is the vendor, is a party to the proceeding and she was restrained to alienate or mortgage or to create any encumbrance.

In the present case, the appellant, who is purchaser of the property from Muniamma, sought direction to respondent No.4 to release the document in favour of his Power of Attorney Holder. Thus, it is a pure and simple case in which even after an order passed by the civil Court in O.S.No.95 of 2018 restraining the vendor to alienate the property in favour of defendant No.2 therein or any other person, but violating the injunction, the vendor executed the said document in favour of the appellant. Hence, the appellant, who is purchaser, is seeking direction to release the document after its registration.

Learned counsel for the appellant has strenuously urged that looking to the provisions as contained under Section 71 of the Registration Act, 1908 (for short "the Act"), the Sub-Registrar can refuse to register a document, on the ground that the property, to which it relates, is not situate within his sub-district, otherwise for other reason, refusal to be recorded in his Book No.2 mentioning

the fact '*registration refused*'. Further, referring to Rule 58 of the AP/TS Registration Rules (for short "the Rules") it is urged that the objection, if any, raised before the Registrar can only be considered, on the ground specified in Clauses (a) to (e) of those Rules, which is not applicable in the present case. Therefore, non-release of the document even after its registration by the Sub-Registrar is not justified. In view of the said submissions, the findings of the impugned order passed by the writ Court have been questioned.

On the other hand, learned Government Pleader for Stamps & Registration appearing on behalf of the respondents contends that it is a pure and simple case wherein the civil Court, while granting injunction, restrained the vendor (Muniamma), who executed the document in favour of the appellant. Therefore, the document as submitted by Muniamma as well the appellant for registration has been detained. In such circumstances, the provisions of Section 71 of the Act as well the Rules do not apply to the facts of the case. Therefore, interference in this appeal is not warranted.

After having heard learned counsel appearing on behalf of the parties and on perusal of Section 71 of the Act, it is apparent that the Sub-Registrar may not refuse to register a document, on the ground that the property to which it relates to is not situated within his sub-district, but can make an order of refusal assigning reasons for such, and recording i.e., in Book No.2 with endorsement '*registration refused*'. If such an order is passed, it would be appealable as per Section 72 of the Act. As per Rule 58

of the Rules, objections raised by the parties can be considered on the ground that the parties appearing or about to appear are not the persons they profess to be or the document is forged or the person appearing as a representative assignee or agent has no right to appear in that capacity or the executing party is not really dead as alleged by the party applying for registration or the executing party is a minor or an idiot or lunatic.

On perusal of the aforesaid, legislative intent can safely be gathered as enumerated herein above. The present case only relates to the fact that the vendor, who executed the document, is a party to a civil suit and restrained to alienate the property either in favour of defendant No.2 in the civil suit or to any one. The third person, who is the appellant, may come within that purview (restrained to alienate in favour of any other person), but by filing the petition he sought direction for registration of the document. In such a case, the provisions of Section 71 of the Act or the Rule 58 of the Rules do not apply, as argued by learned counsel for the respondents. It is a case in which the civil Court restrained the vendor to execute a sale deed, however the Sub-Registrar must have refused to register the document, in view of the order of the civil Court. Otherwise, it would invite the multiplicity of the litigation and the Sub-Registrar has to face the contempt proceedings. In view of the above discussion, the order passed by the learned single Judge does not warrant any interference.

Accordingly, this writ appeal is dismissed. There shall be no order as to costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

**J. K. MAHESHWARI, CJ**

**U. DURGA PRASAD RAO, J**

5<sup>th</sup> November, 2019  
cbs

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**Writ Appeal No.190 of 2019**

(Judgment delivered by the Chief Justice J.K. Maheshwari)

**5<sup>th</sup> November, 2019**

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