

Sub-Registrars cannot register civil suit complaints, make them reflect in property encumbrance certificates, rules HC

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In a significant verdict, the Madras High Court has ruled that Sub-Registrars cannot register either the complaints filed in civil suits regarding immovable properties, or the dismissal orders passed in interim injunction applications and make consequent entries in the encumbrance certificates.

Justice N. Anand Venkatesh said registering the complaints/dismissal orders and making such registration reflect in the encumbrance certificate too would only help the trouble mongers in preventing the genuine landowners from dealing with their properties in a lawful manner.

“If the owner of a 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 will not be able to deal with the property since the purchaser would want that entry to be removed or deleted,” the judge pointed out.

He examined in detail the definitions of the terms ‘document’ as well as ‘instrument’ and analysed the provisions of the Registration Act of 1908 and the Indian Stamp Act of 1899.

Thereafter, the judge wrote: “This court holds that pleadings that are filed in a civil suit do 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.”

When Government Advocate P. Harish recalled that two single judges of the High Court had in the past directed the Registration Department to register complaints filed in civil suits so that the purchasers of a property get to know about pending litigation,

The judgment was passed while allowing a writ petition against an entry made in a property encumbrance certificate

Justice Venkatesh said, “Even though, such directions are well intended, there was a flip side to it.”

“This court holds that the earlier directions are not in line with the provisions of the Registration Act and the Stamp Act and hence, must be held to be *per incuriam* (an order passed without taking note of the legal position),” he said.

Pending legal action

Observing that any property transaction that takes place during the pendency of a litigation would only be hit by the rule of *lis pendens* (pending legal action), the judge said, “Ultimately, it is for the legislature to bring about necessary amendments in the Registration Act and in

the Indian Stamp Act to deal with the situation and the courts cannot issue directions which will run contrary to the existing provisions.”

The judgment was passed while allowing a writ petition filed by M. Gunasekaran of Dharmapuri district who was aggrieved against an entry made in his property’s encumbrance certificate on the basis of the registration of a civil court’s dismissal order in an interim injunction application filed against him.

“The dismissal order passed by the concerned civil court does not create any right over the property for the third respondent (plaintiff before the civil court) and in spite of the same, the order has been registered by the second respondent (Sub-Registrar). As a result, what the third respondent was not able to achieve before the civil court has now been achieved by way of showing an encumbrance over the property,” Justice Venkatesh said.

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The article discusses a significant legal ruling by the Madras High Court regarding the registration of civil suit complaints and the implications for property encumbrance certificates in India. Here’s a detailed explanation of the subject matter:

Key Points of the Judgment

Context:

The case revolves around the role of Sub-Registrars, who are officials responsible for registering legal documents related to property transfers and transactions.

Civil Suit Complaint Registration:

The court clarified that Sub-Registrars are not permitted to register civil suit complaints regarding immovable properties.

It ruled that if a complaint is registered in the property encumbrance certificate, it could complicate the ownership transfer process by hindering potential buyers.

Consequences of the Ruling:

If a property has a civil suit pending against it, that entry reflects in the encumbrance certificate, which could dissuade buyers.

Potential property purchasers would see a noted legal dispute, which could deter them from investing in the property.

Terminology

Encumbrance Certificate:

An official document that confirms whether a property is mortgaged or has any legal dues against it. It is crucial for buyers to ascertain the clear title of the property.

Civil Suit:

A legal action initiated by a plaintiff against a defendant. In property matters, this could relate to disputes over ownership, boundaries, or rights concerning a piece of land.

Legal Framework

Registration Act of 1908:

Governs the registration of documents in India. It mandates that certain documents must be registered to have legal validity.

Indian Stamp Act of 1899:

Regulates the taxation of various documents, ensuring that stamp duty is paid for transactions to be legally binding.

Illustrative Example

Scenario:

Imagine a property owner, Mr. A, who has a dispute with his neighbor, Mr. B, over a boundary line and files a civil suit.

If a Sub-Registrar were to allow the registration of this plaint, the encumbrance certificate of Mr. A's property would reflect this ongoing dispute.

Impact on Buyers:

A potential buyer, Ms. C, looking to purchase Mr. A's property would see this entry in the encumbrance certificate and might decide against buying, fearing legal issues.

Court Ruling:

The court determined that such entries should not be registered, thereby protecting genuine property transactions from the adverse effects of pending legal disputes.

Conclusion

The ruling is essential for maintaining a clear and marketable title in property transactions. By not allowing the registration of civil suit plaints in encumbrance certificates, the Madras High Court aims to simplify the process for prospective property buyers and safeguard property rights. The judgment reflects an intention to prevent unnecessary complications in the transfer of property ownership due to legal disputes, ensuring that genuine landowners can sell their properties without hindrance from pending litigations.