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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P. (MD) No.21485 of 2014

R.Thirukumar

: Petitioner

Vs.

1.The Sub-Registrar,
Aruppukkottai, Virudhunagar District.

2.The Official Receiver,
Sub-Court, Aruppukkottai,
Virudhunagar District.

3.The Official Receiver,
District Court, Srivilliputtur,
Virudhunagar District.

: Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Declaration, declaring that the marking of encumbrance by the first respondent as Encumbrance No.854, dated 15.02.2013 is null and void and is of no legal consequence.

For Petitioner : Mr.V.Singan
For Respondents : Mr.T.R.Janarthanam
Additional Government Pleader

O R D E R

The present Writ Petition has been filed giving false information to the Court, seeking a Writ of Declaration, declaring that the marking of encumbrance by the first respondent as Encumbrance No.854, dated 15.02.2013 is null and void.

2. The petitioner earlier approached this Court by filing W.P.[MD]. No.13621 of 2013, challenging the proceedings relating to marking of encumbrance by the first respondent as Encumbrance No.854, dated 15.02.2013 and for a direction to the respondents to expunge and delete the encumbrance over the property in question.

3. According to the petitioner, this Court, by order dated 04.09.2014, while dismissing the said Writ Petition, granted liberty to the petitioner to move the first respondent therein for deleting the encumbrance over the property in question. Thereafter, by virtue of the order of this Court, dated 04.09.2014, the petitioner approached the authority concerned. But, till date, no order has been passed removing the encumbrance.

<https://hcservices.ecourts.gov.in/hcservices/>

4. According to the petitioner, the Insolvency Proceedings in I.P.No.1 of 1970 was dismissed for non-prosecution on 20.04.2007 and



therefore, the subsequent attachment cannot be continued after the dismissal of the Insolvency Proceedings. Hence, the present Writ Petition has been filed seeking a Writ of Declaration, declaring that the marking of encumbrance by the first respondent as Encumbrance No.854, dated 15.02.2013 is null and void.

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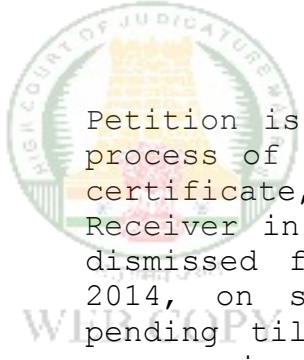
5. In fact, earlier, this Court passed an order, on 04.09.2014 in W.P.[MD].No.13621 of 2013. Paragraph Nos.2 and 3 are usefully extracted hereunder:-

2. Pursuant to an order passed by this Court, dated 05.08.2014, a report has been filed by the Principal Sessions Judge, Virudhunagar District at Srivilliputhur, to this Court, by proceedings dated 28.08.2014, in which it has been stated that the insolvency proceedings in I.P.No.1 of 1970 was filed on 01.04.1970 before the Subordinate Court, Sivagangai and an order was passed on 02.04.1971 and renumbered as I.P.No.14 of 1992 in the Official Receiver Court, Virudhunagar District at Srivilliputhur and the matter is pending before the said Court and I.P.No.1 of 1970 has not been terminated and the final order has not been passed. It is also stated in the said report that at present, the Official Receiver post is vacant in Virudhunagar District.

3. In the light of the above stand, the proceedings has not attained finality in the legal sense. Therefore, liberty is given to the petitioner to approach the appropriate authority and produce sufficient records to show that the proceedings have been terminated and thereafter, approach the Sub Registrar for deletion of the entry. While the petitioner approaches the competent authority, the petitioner is entitled to produce a copy of the order, dated 20.04.2007, passed by the Subordinate Court, Aruppukottai and thereafter, pass an order to enable the petitioner to move the first respondent for deleting the entry."

6. On a plain reading of the above order shows that by virtue of the order passed by this Court, on 05.08.2014, a report was called for from the Court concerned by proceedings dated 28.08.2014, in which it has been stated that the insolvency proceedings in I.P.No.1 of 1970 was filed, on 01.04.1970 before the Subordinate Court, Sivagangai and an order was passed on 02.04.1971 and renumbered as I.P.No.14 of 2014 in the Official Receiver Court, Virudhunagar District at Srivilliputhur and the matter was pending before the said Court and I.P.No.1 of 1970 has not been terminated and no final order has been passed.

7. This Court has also clearly stated in the earlier order that it is up to the petitioner to approach the authority concerned with relevant documents to show that the Insolvency Proceedings has been subsequently terminated and thereafter, permitted the petitioner to approach the Sub-Registrar for deletion of the entry. However, in the affidavit filed in support of the Writ Petition, the petitioner conveniently does not even say anything that when he had approached the authority concerned, when he has made representation in this regard and when the Insolvency Proceedings was terminated. Nothing has been mentioned in the affidavit. That is why, at the outset, I had to make a remark that this Writ



Petition is a clear case of suppression of materials facts and abuse of process of Court. Further, as per the impugned order, in the encumbrance certificate, the attachment is made as per the order of the Official Receiver in the year 2011, much after the alleged insolvency proceedings dismissed for default. Further, this Court even as late in September 2014, on seeing the report, has stated that insolvency petition is pending till date. Therefore, the very filing of this Writ Petition, suppressing all the above facts, is totally wrong.

8. In the result, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1.The Sub-Registrar, Aruppukkottai, Virudhunagar District.

2.The Official Receiver, Sub-Court, Aruppukkottai,
Virudhunagar District.

3.The Official Receiver,
District Court, Srivilliputtur, Virudhunagar District.

+1cc to MR.V.SINGAN, ADVOCATE IN SR : 683

+1CC TO THE SPECIAL GOVERNMENT PLEADER, IN SR : 453

Nb

SR : 29.01.2015 : 3p/6c

ORDER MADE IN
W.P. (MD) No.21485 of 2014
06.01.2015