

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2016

CORAM

THE HON'BLE MR. JUSTICE R.SUBBIAH

W.P.No.36079 of 2015

S.Praveen Bohra

... Petitioner

Vs

Joint-I Sub-Registrar
(In the cadre of District Registrar)
Office of Registration of Coimbatore
No.102, State Bank Road
District Collector Office Campus
Coimbatore-641 018.

.... Respondent

Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the respondent, dated 26.10.2015, in cancelling the registered sale deed executed in favour of the petitioner bearing P.No.175 of 2011 and quash the same and consequently, to direct the respondent to register the sale deed in P.No.175 of 2011, dated 11.11.2011 and presented on 23.11.2011 and return the original document of sale deed after due registration to the petitioner.

For Petitioner : Mr.K.Ramu

For respondent : Mr.M.Dig Vijaya Pandian
Additional Government Pleader

O R D E R

This Writ Petition has been filed praying for a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the respondent, dated 26.10.2015, in cancelling the registered sale deed executed in favour of the petitioner, bearing P.No.175 of 2011, and quash the same and consequently, to direct the respondent to register the sale deed in P.No.175 of 2011, dated 11.11.2011 and presented on 23.11.2011 and return the original document of sale deed after due registration to the petitioner.

2. The brief facts, which are necessary to dispose of this Writ Petition, are as follows:-

(i) The subject property situated at old Door No.20B, new Door Nos.85 and 86, comprised in T.S.No.8/516 part and 519 part and new T.S.No.8/843/2, with land measuring an extent of 2950 sq.ft. and building thereon at R.S.Puram, Coimbatore, was originally purchased by one Sivathal and her husband K.Rangasamy, by registered sale deed dated 11.03.1993, registered as Document No.1886 of 1993 in the office of the District Registrar Office, Coimbatore. Subsequently, K.Rangasamy died on 29.08.1996, leaving behind his wife Sivathal, two sons and three daughters, as his legal heirs. Thereafter, an agreement of sale was entered into by petitioner's deceased Uncle Ashok Bohra and the owners of the property viz., Sivathal and others. Since, a dispute arose, a suit for specific performance in O.S.No.39 of 2004 was filed before the District Judge-cum-Fast Track Court No.II, Coimbatore. Subsequently, two legal heirs viz., the two daughters of Sivathal, filed two separate suits for partition in O.S.No.351 of 2009 before the District Court, Coimbatore and O.S.No.169 of 2010 before the District Court-cum-Fast Track Court No.I, Coimbatore, which were subsequently withdrawn by them. The suits in O.S.Nos.39 of 2004 and 351 of 2009 were tried and they were referred to Mediation, wherein, the parties to the suit entered into a compromise. All the legal heirs numbering nine, whom includes grandsons of late K.Rangasamy and his wife Sivathal, executed a registered sale deed in respect of the property situated at old Door No.20B, new Door Nos.85 and 86, comprised in T.S.No.8/516 part and 519 part and new T.S.No.8/843/2, with land measuring an extent of 2950 sq.ft. and building thereon at R.S.Puram, Coimbatore, on 11.11.2011, in favour of the petitioner for a sale consideration of Rs.1,10,00,000/- and the said sale deed was presented for registration on 23.11.2011 in the office of the respondent for registration by the vendors and the petitioner. All the vendors and petitioner have admitted due execution of the sale deed before the respondent. Even though, the guideline of the property was Rs.85,00,000/-, the stamp duty was accordingly paid on one crore ten lakhs on the guideline value and the petitioner paid a sum of Rs.8,79,100/- towards stamp duty and requisite registration fee.

(ii) But, due to the shock and surprise of the petitioner, the respondent kept the document as pending document in P.No.175 of 2011. Further, the respondent failed to return the registered document to the petitioner. On enquiry, the respondent orally informed that there was an order of attachment of property passed by a Civil Court and assigned only pending document number. The respondent refused to register the sale deed. The petitioner aggrieved over the inaction of the respondent, issued a legal notice to the respondent in the month of June, 2014. Though, the said notice was received by the respondent, he has neither chosen

to receive the notice nor registered and returned the document. Hence, the petitioner has filed W.P.No. 12314 of 2015 before this Court. By order, dated 24.04.2015, this Court disposed of the Writ Petition, with a direction to the respondent to consider the representation dated 23.06.2014, after giving an opportunity of personal hearing to the petitioner and dispose of the representation within four weeks from the date of receipt of the copy of the order.

(iii) Pursuant to the above order passed by this Court, the respondent was put on notice, by letter dated 04.06.2015, to consider the petitioner's representation dated 23.06.2014. But, the respondent has slept over the issue, which forced the petitioner to sent contempt notice through petitioner's lawyer on 07.07.2015. Thereafter, the respondent, by the impugned order dated 26.10.2015, cancelled the document of sale deed presented in favour of the petitioner by invoking Rule 162 of Registration Rules on the ground that there is an order of attachment obtained by a third party in a Civil Suit in respect of the property in dispute. Hence, the petitioner has filed the present Writ Petition.

3. The respondent has filed a detailed counter, wherein, he has inter alia contended that the sale deed presented for registration on 23.11.2011 was pending in the office of the respondent and the same was assigned pending No.175/2011, due to the reason of subsisting attachment orders from the Civil Court. The orders of attachment have been filed as L51/2001, L35/2003, L12/2005, L62/2011, L63/2011 and L64/2011. Since, as on date, the attachment orders are still pending, the document was kept as a pending document. In the counter, it has been further averred that the respondent has refused to register the document by virtue of the powers conferred on him under Section 71 of the Registration Act. Section 76(b) of the Registration Act, stipulates that the District Registrar (Administration) is the Appellate Authority. In the counter, it has been further stated that the petitioner has appeal provision under Section 71 of the Registration Act and therefore, the petitioner may be directed to avail the appeal provision under Section 71 of the Registration Act.

4. At this juncture, Mr.K.Ramu, the learned counsel appearing for the petitioner would submit that the order of attachment passed by the Civil Court cannot be a bar for registering the document. With regard to the said proposition, he relied on the following judgments:-

- (1) Unreported judgment of this Court in W.P.No.19530 of 2007, dated 14.11.2007.
- (2) Unreported judgment of the Madurai Bench of Madras High Court in W.P.(MD) No.7728 of 2007, dated 09.06.2009.
- (3) Unreported judgment of the Madurai Bench of Madras High Court in W.P.(MD) No.2635 of 2012, dated 13.03.2013.
- (4) Unreported judgment of Madurai Bench of Madras High Court in W.P.(MD) No.14388 of 2014, dated 01.09.2014.

5. I have heard Mr.M.Dig Vijaya Pandian, the learned Additional Government Pleader appearing for the respondent, who vehemently oppose to the grant of the prayer sought for by the petitioner on the ground that appeal remedy is available to the petitioner under Section 71 of the Registration Act and hence, prays for the dismissal of the Writ Petition.

6. It is relevant to refer to the unreported judgment of the Madurai Bench of Madras High Court in W.P.(MD) No.2635 of 2012, dated 13.03.2013, in the case of M/s.K.D.P.Properties Private Limited vs. The Sub-Registrar and other, relied on by the learned counsel for the petitioner, wherein, in paragraph No.18, a reference was made to the decision of the Hon'ble Apex Court reported in (1985) 2 SCC 167, Balkrishan Gupta and others vs. Swadeshi Polytex Limited and another, and it was held as follows:-

"18. In (1985) 2 SCC 167 (supra), the Hon'ble Supreme Court has held as under:

"30. The consequence of attachment of certain shares of a company held by a shareholder for purposes of sale in a proceeding under section 149 of the Land Revenue Act is more or less the same. The effect of an order of attachment is what Section 149 of the Land Revenue Act itself says. Such attachment is made according to the law in force for the time being for the attachment and sale of movable property under the decree of a civil court. Section 60 of the Code of Civil Procedure, 1908 says that except those items of property mentioned in its proviso, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities of money, debts, shares in a corporation and all other

saleable property, moveable or immovable, belonging to a judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor, or by another person in trust for him or on his behalf, is liable for attachment and sale in execution of a decree against him. Section 64 of the Code of Civil Procedure, 1908, states that where an attachment of a property is 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. What is forbidden under Section 64 of the Code of Civil Procedure is a private transfer by the judgment-debtor of the property attached contrary to the attachment, that is, contrary to the claims of the decree holder under the decree for realisation for which the attachment is effected. A private transfer under Section 64 of the Code of Civil Procedure is not absolutely void, that is, not void as against all the world but void only as against the claims enforceable under the attachment. Until the property is actually sold the judgment debtor retains title in the property attached. Under Rule 76 of Order 21 of the Code of Civil Procedure, 1908, the shares in a corporation which are attached may be sold through a broker. In the alternative such shares may be sold in public auction under Rule 77 thereof. On such sale either under Rule 76 or under Rule 77, the purchaser acquires title. Until such sale is effected, all other rights of the judgment debtor remain unaffected even if the shares may have been seized by the officer of the court under Rule 43 of Order 21 of the Code of Civil Procedure, 1908 for the purpose of effecting the attachment, or through a Receiver or through an order in terms of Rule 46 of Order 21 of the Code of Civil Procedure may have been served on the judgment debtor or on the company concerned".

19. The dictum laid down in the above judgment (1985) 2 SCC 167 (supra), gives a fitting answer to the issue raised in this writ petition. So far as the order of attachment passed by the DRT is concerned, the transfer is not void generally but it

is void only as against the claims enforceable under the said attachment. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale. However, if the 2nd respondent bank exercises its right as against the property, the petitioner cannot raise any objection because the sale of the vendor in favour of the petitioner is void in respect of the order of attachment obtained by the 2nd respondent bank. So, even if the property is sold in favour of the petitioner, the 2nd respondent bank can always exercise its right as against the said property.

20. In view of the above finding, I am of the opinion that the sale of the subject property pending the order of attachment is void only as against the claims enforceable under the order of said attachment and not in respect of other claims. Therefore, the sale of the property, which is under attachment, cannot be said as illegal.

In the light of what is stated above, the writ petition is allowed and the 1st respondent -Sub Registrar, Kochiadai, Madurai, is directed to release the registered document in favour of the petitioner within a period of one week from the date of receipt of a copy of this order. No costs."

7. It is also worthwhile to refer to the unreported judgment of Madurai Bench of Madras High Court in W.P.(MD) No.14388 of 2014, dated 01.09.2014, in the case of M.Chitra vs. The Sub-Registrar, relied on by the learned counsel for the petitioner, wherein, in paragraph No.5, it was held as follows:-

"5. In such circumstances, merely because there is an order of attachment passed by a Civil Court, the same cannot be a ground to refuse to register the Memorandum of Deposit of Title Deeds. If any deposit of title deeds is created in respect of the said property pursuant to the right acquired by the petitioner, vide settlement deed, dated 04.07.2011, it is always subject to further orders to be passed by the Civil Court. The petitioner's case is that she acquired title by way of settlement deed dated 04.07.2011, much prior to the order of attachment. Further, the learned counsel appearing for the petitioner placed reliance on Order 38, Rule 10 C.P.C. stating that attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution

of such decree. The lending bank namely, Canara Bank, Vadamadurai if satisfies with the title of the petitioner over the property, can request the Registrar to register the document. In such circumstances, merely because an order has been passed by the Civil Court effecting attachment, cannot be a bar for entertaining a document for registration. Hence, the reasons assigned by the respondent refusing to register, vide his memo, dated 25.07.2014, is not in accordance with law beyond the scope of Section 71 of the Act."

8. Thus, it is crystal clear that it is well settled principle of law that the order of attachment cannot be a bar to register the document. Therefore, I am of the view that there is no need for this petitioner to file an appeal. I am of the opinion that the sale of the subject property, pending the order of attachment is void only as against the claims enforceable under the order of said attachment and not in respect of other claims. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale.

9. In the light of the decisions cited supra, the Writ Petition is allowed and the respondent viz., Joint-I Sub-Registrar, Coimbatore, is directed to register the document and release the registered document in favour of the petitioner, within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

"10. The Executing Court is at liberty to decide the case, without being influenced by the order of this Court."

Sd/-

Assistant Registrar(CS II)
Dated: 14.3.2016

*Amended as per the
order of this Honourable
Court dated 16.3.2016
made in W.P.No.36079/15
Sd/
Assistant Registrar
Dated: 31.3.2016

//True Copy//

Sub Assistant Registrar

To

Joint-I Sub-Registrar,
(In the cadre of District Registrar),
Office of Registration of Coimbatore,
No.102, State Bank Road,
District Collector Office Campus,
Coimbatore-641 018.

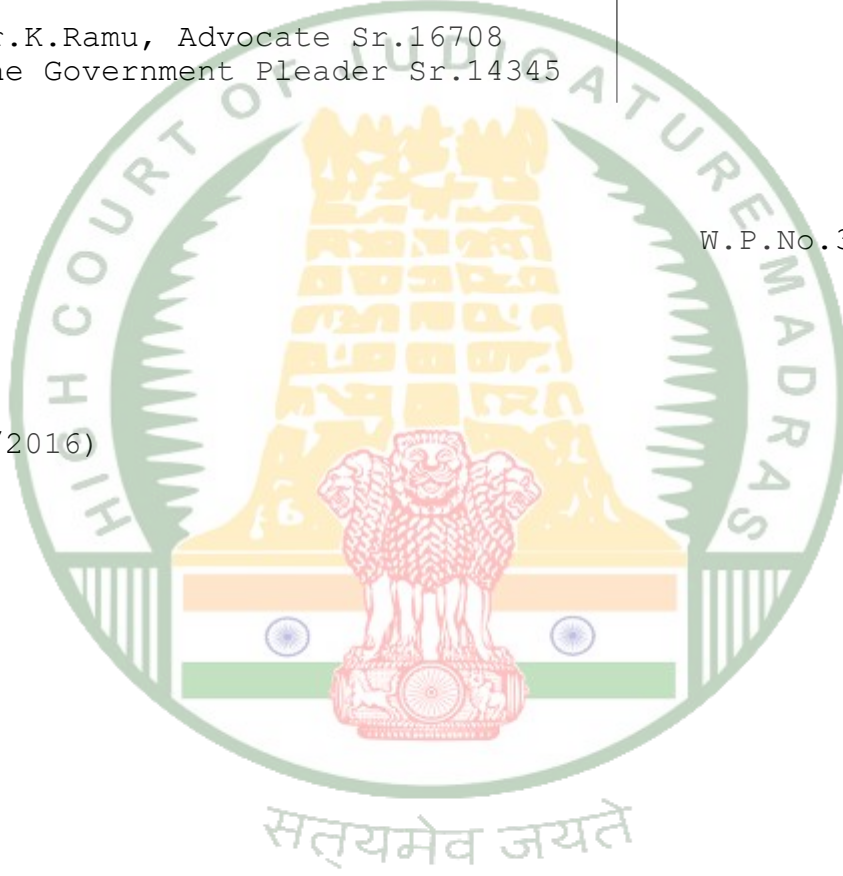
To be substituted to
the order already
despatched on
15.3.2016

+lcc to Mr.K.Ramu, Advocate Sr.16708
+lcc to the Government Pleader Sr.14345

W.P.No.36079 of 2015

mg (CO)
srg (14/03/2016)

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