

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.37940 of 2015
and M.P.No.1 of 2015

Savithri R.Naidu

.. Petitioner

- Vs -

1. The District Registrar,
Coimbatore District,
Collector Office Compound,
Barath Bank Street,
Coimbatore - 641 018,
2. The Sub-Registrar,
Annur Sub-Registration District,
Coimbatore - 641 653,
3. M/s.Lakshmi Ganesha Textiles Private Limited,
rep.by its Managing Director,
Vikram R.Naidu,
NO.442, Avinashi Road,
Peelamedu,
Coimbatore - 641 004. .. Respondents

Prayer:- Writ Petition has been filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 27.10.2015 in Notice No.234/2015 passed by the 2nd respondent refusing to register the sale deed dated 23.4.2015, quash the same, and consequently direct the 2nd respondent to register the sale deed dated 23.4.2015 executed by the 3rd respondent Company in favour of the petitioner in respect of LGT-1 and LGT-2 properties.

Petitioner : Mr.Anand Venkatesh
for Mr.Nithyaesh
For Respondents : Mr.V.Subbiah,
Spl.Govt.Pleader for RR.1 and 2

O R D E R

The proceedings have been initiated against the original owner of the property, which was pending before the Debt

Recovery Tribunal, Chennai. As the petitioner came forward to settle a part of amount, an order was passed on 20.4.2015 in S.A.No.220 of 2013 which is as follows:

'Ld. counsel Mr.Marimuthu is appearing for Applicant. Ld. counsel Mr.S.Elango is appearing for the R/B. It is represented by the Ld. counsel for the Applicant that the matter has been settled under OTS by making payment of Rs.13,75 crores towards full and final settlement and accordingly one Mrs. Savithri Naidu the purchaser has paid the full payment in pursuance of the tripartite agreement entered into between the Applicant, R/Bank and the purchaser. Affidavit filed and it is recorded today. Petition filed. FS recorded. Endorsement made on the front page of the original SA by the Ld. counsel for the Applicant that SA 220/13 is withdrawn and it is recorded. Hence, in view of the endorsement being made on the front page of SA 220/13 and the Affidavit being filed. SA 220/2013 is dismissed as 'withdrawn'. No costs.'

2. Thereafter, the attachment for the above said property was also lifted, as seen from the Order dated 23.6.2015 passed by the Debt Recovery Tribunal in O.A.No.120 of 2013, which is as follows:

'WHEREAS in the above said matter, the Scheduled mentioned 'A', 'B' and 'C' properties were attached by Order of the Hon'ble Presiding Officer dated 19.07.2013 in IA.No.138/2013.

And Whereas Hon'ble Presiding Officer vide Order dated 13.03.2015 has raised the attachment of the Item No.1 in Schedule 'C' mentioned property of D2.

AND WHEREAS the Hon'ble Presiding Officer vide order dated 16.06.2015 has raised the attachment of the Schedule 'A', 'B' and remaining items in Schedule 'C' mentioned properties as per enclosure (8 Sheets).

Now, therefore, the attachment of the aforesaid properties effected vide order dated 19.07.2013 in IA No.138/2013 is hereby raised.

Issued under my hand and seal of this Tribunal on this 23rd day of June, 2015.'

3. It appears that as against the other properties and the remaining amount, the proceedings are pending. Suffice it is to state that the order in favour of the petitioner, in whose favour the sale was executed, is a consent order between the Bank and the petitioner. Therefore, the subsequent order raising the attachment over the property purchased by the petitioner was also a consent order.

4. The request of the petitioner for registration was rejected, which resulted in filing the earlier writ petition in W.P.No.19753 of 2015, in which this Court on 6.7.2015 was pleased to pass the following order:

'...6. The 4th respondent is only a formal party, who executed the sale deed in question in respect of the property covered under the proceedings mentioned at serial No.1 of the impugned order. Insofar as the Item No.1 of the property is concerned, it is the categorical stand of the petitioner that the entire amounts due to ICICI Bank has been settled pursuant to the Tripartite Agreement and as far as the other items of properties are concerned, the orders of attachment came to be passed only after the execution of the sale deed and therefore, it would not at all bind them. The Hon'ble Supreme Court in Hamda Ammal's case cited supra has held the sale deed executed prior to the attachment before judgement can be registered and it will prevail over the attachment. A perusal of the impugned order would disclose that the petitioner has not been afforded with any opportunity to put forth his stand as to the subsistence of the orders of attachment and hence this court is of the view that on this sole ground the impugned order warrants interference at the hands of this court.

7. In the result, this writ petition is partly allowed and the impugned order is set aside and the matter is remitted to the 3rd respondent and the petitioner is at liberty to submit a detailed representation as to the stand taken by him in respect of the registration of sale along with the sale deed which is sought to be registered within a period of two weeks from the date of receipt of a copy of this order and on such representation, the 3rd respondent shall afford an opportunity of personal hearing to the petitioner as well as to the persons concerned and consider the claim of the petitioner on merits and in accordance with law and pass appropriate orders thereon within a period of

twelve weeks thereafter and communicate the decision taken, to the petitioner as well as the person concerned. No costs. Consequently, connected MP is closed.''

5. Thereafter, by a total non-application of mind, the order impugned has been passed without understanding the contentions raised before the 2nd respondent. Challenging the said order, the present writ petition has been filed.

6. As rightly submitted by the learned counsel for the petitioner, when the order of attachment has been raised and there is no objection from the applicant in the original application before the Debt Recovery Tribunal for the sale and raising the attachment and the said order having become final the refusal to register the document cannot be sustained either on fact or on law. In the counter affidavit, it has also been stated that suits have been filed by third party against the original owner of the property is the judgment debtor in the application filed by the Bank. The judgment debtor is none other than the 3rd respondent herein, who has also not appeared before this Court. In any case, he is neither a necessary nor a proper party for adjudication. The above said suits cannot constitute legal bar in carrying out the registration in favour of the petitioner. But obviously there is no interim order prohibiting the 2nd respondent from carrying out its statutory duties. Apparently the 2nd respondent has not understood the direction of this Court in passing the order impugned, which certainly lacks application of mind.

7. Accordingly, the order impugned is set aside. Consequently, the 2nd respondent is directed to register the sale deed dated 23.4.2015 executed by the 3rd respondent Company in favour of the petitioner within a period of four weeks from the date of receipt of copy of this order, subject to the satisfaction of the other conditions including the payment of adequate stamp duty. The writ petition is ordered accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

To

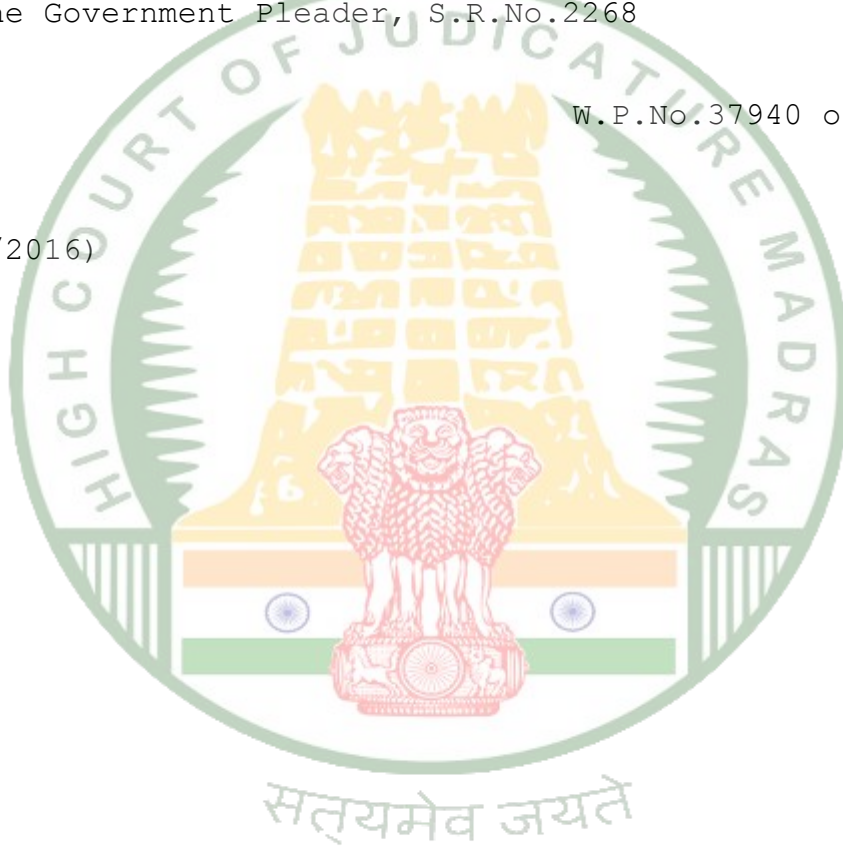
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2. The Sub-Registrar,
Annur Sub-Registration District,
Coimbatore - 641 653,

+5cc to Mr.Niithyash, Advocate, S.R.No.1984

+1cc to the Government Pleader, S.R.No.2268

W.P.No.37940 of 2015

jsv(CO)
srg(18/01/2016)



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