

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.23380 of 2016

R.Narayanan

..Petitioner

vs.

1.The District Registrar,
Vellore,
Vellore District.

2.The Sub-Registrar,
Pallikonda,
Vellore District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the second respondent to entertain any of the transaction in respect of property covered under Document Nos.5675 of 2013, 5676 of 2013 & 5677 of 2013 dated 23.09.2013.

For Petitioner : M/s.R.Margabandhu
For Respondents : Mr.R.A.S.Senthilvel,
Additional Government Pleader

O R D E R

By consent this Writ Petition is taken up for final disposal.

2. The petitioner claims to have purchased certain items of properties through registered sale deeds dated 23.09.2013 under Doc.Nos.5675 and 5676 of 2013 and sale certificates were issued by the State Bank of India and when it is presented for registration before the second respondent, it was returned on account of the fact that attachment order passed by Civil Court is in subsistence and admittedly, the said attachment order came into being after the sale certificates were presented for registration and despite subsistence of attachment order, there cannot be any impediment on the part of the second respondent to register the sale certificates and placed reliance upon the decisions in K.D.P. Properties Pvt. Ltd., Chennai v. The Sub-Registrar, Arasaradi Sub-Registrar Office, Madurai and another [2013 (2) CTC 714] and S.Praveen

Bohra v. Joint-I Sub Registrar (In the cadre of District Registrar), Coimbatore [2016 (1) CWC 449].

3. Heard the submissions of Mr.R.A.S.Senthilvel, learned Additional Government Pleader, accepts notice on behalf of the respondents.

4. It is relevant to extract the following portion of the judgment in S.Praveen Bohra v. Joint-I Sub Registrar (In the cadre of District Registrar), Coimbatore [2016 (1) CWC 449]:

"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."

5. In the light of the ratio laid down in the above cited decision, the second respondent is directed to entertain the documents presented by the petitioner for registration, if the papers are otherwise in order and pass orders in the light of the above cited judgments as well as the observations made in this writ petition, within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

6. This Writ Petition is disposed of accordingly. No costs.

jvm

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The District Registrar,
Vellore, Vellore District.

2.The Sub-Registrar,
Pallikonda,
Vellore District.

+ 1 cc to M/s.R.Margabandhu, Advocate Sr 43118

+ 1 cc to The Govt.Pleader, Sr 43319

KR/5/8/16

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