

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.4183 of 2016
and W.M.P.No.3499 of 2016

R.Palanisamy

... Petitioner

vs.

1.The District Registrar/ Administration,
Chennai (Central).

2.The Sub Registrar,
No.1103, Poonamallee High Road,
Periamet, Chennai-3.

... Respondents.

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus directing the second respondent herein to register the sale certificate issued by the Authorized Officer of the JM Financial Asset Reconstruction Company Private Limited, Mumbai and issued under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 that was presented for registration on 9.11.2005 which document is kept pending as document No.P201500189 with respect to the property bearing Flat No.III-A (Third Floor), Door No.75 (Old No.33) Langs Garden Road, Komaleeswaranpet, Chennai-2 and comprised in R.S.No.952/1 (part) and the building in an extent of 1020 sq.ft. together with 1020/7440th part of the undivided share in the total extent of the land of 1 ground and 1285 sq.ft. and release the said document after such registration, to the petitioner herein or his nominee and within such time as may be prescribed by this Court after making necessary endorsement in the said document regarding the pendency of the proceedings under Section 47-A of the Indian Stamp Act, 1899 and the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

For Petitioner : Mr.N.Damodaran

For Respondents : Mr.S.Navaneedhan,
Addl. Govt. Pleader.

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition for a mandamus, directing the second respondent herein to register the sale certificate issued by the authorized officer of the JM Financial Asset Reconstruction Company Private Limited, Mumbai and issued under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 that was presented for registration on 9.11.2005 which document is kept pending as document No.P201500189 with respect to the property bearing Flat No.III-A (Third Floor), Door No.75 (Old No.33) Langs Garden Road, Komaleeswaranpet, Chennai-2 and comprised in R.S.No.952/1 (part) and the building in an extent of 1020 sq.ft. together with 1020/7440th part of the undivided share in the total extent of the land of 1 ground and 1285 sq.ft. and release the said document after such registration, to the petitioner herein or his nominee and within such time as may be prescribed by this Court after making necessary endorsement in the said document regarding the pendency of the proceedings under Section 47-A of the Indian Stamp Act, 1899 and the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

3. The case of the petitioner, in brief, is as follows:-

(a) The property bearing Flat No.III-A (Third Floor), Door No.75 (Old No.33) Langs Garden Road, Komaleeswaranpet, Chennai-2, comprised in R.S.No.952/1 (part) and the building to an extent of 1020 sq.ft. together with 1020/7440th part of the undivided share in the total extent of the land of 1 ground and 1285 sq.ft. originally belonged to one W.S.Suresh Kumar. He purchased the said property under a deed of sale dated 4.11.2004 registered as document No.2535 of 2004 before the Sub Registrar, Periamet.

(b) One M/s.Hema Enterprises initially availed credit facility by way of financial assistance against various assets creating security interest from State Bank of India under Small and Medium Enterprises and also created mortgage by way of deposit of title deeds in favour of the Bank. The said M/s.Hema Enterprises while availing financial assistance from the State Bank of India, offered personal guarantee of the properties of the said W.S.Sureshkumar, W.S.Vinodbabu and L.Prabhakar. Since the operation and conduct of the said financial assistance / credit facilities have become irregular, the debt has been duly classified as Non-Performing Assets on 26.10.2010 by the bank in accordance with the directives / guidelines relating to asset classifications issued by the Reserve Bank of India. Thereafter,

notice under Section 13(2) of the SARFAESI Act dated 18.8.2011 was issued to the borrower as well as guarantors asking them to discharge their liabilities. The aforesaid property owned by W.S.Suresh Kumar, who stood as a guarantor, was also included as Schedule C, Part II of item 4 of the notice dated 18.8.2011.

(c) In order to realise the said financial assistance offered by the State Bank of India to M/s.Hema Enterprises, the bank entered into an Assignment Agreement dated 26.3.2014 with JM Financial Asset Reconstruction Company Private Limited and pursuant to the assignment agreement, the said company issued e-auction notice for sale of secured assets of M/s.Hema Enterprises under the provisions of SARFAESI Act on behalf of the State Bank of India. In the e-auction dated 16.6.2015, JM Financial Asset Reconstruction Company Private Limited had also brought the aforesaid property at Flat No.III-A (Third Floor), Door No.75 (Old No.33) Langs Garden Road, Komaleeswaranpet, Chennai-2, comprised in R.S.No.952/1 (part) for auction sale as Lot No.2 fixing the reserve price of Rs.55,70,000/-. The date of auction was fixed as 21.7.2015 and the petitioner participated in the e-auction sale and he was the highest bidder of lot No.2 of the said property. He has also paid the full reserve price of Rs.55,70,000/-. Pursuant to the same, the State Bank of India sold the said property in favour of the petitioner and the sale certificate was also issued in favour of the petitioner on 6.11.2015 on receipt of the sale price of Rs.55,70,000/-. Thus, he became the absolute owner of the said property.

(d) Thereafter, the petitioner presented the sale certificate issued in his favour to the second respondent for registration on 9.11.2015. He has also paid the stamp duty of Rs.3,89,900/- for the value of the property obtained in e-auction sale for Rs.55,700,000/-. The second respondent has received the said document for registration and he has also issued a receipt No.20153530 and treated the said document as pending document in No.P.201500189. When the petitioner made an enquiry with the second respondent as to whether the sale certificate presented by him was registered, it was orally informed by the second respondent that the petitioner has to pay the guideline value for the property, both vacant land and for the building portion and the second respondent is taking steps to refer the matter to the first respondent to determine the market value of the property. Hence, the petitioner has come forward with the present petition for the relief set out earlier.

4. It is the main submission of the learned counsel appearing for the petitioner that if the second respondent has a doubt with regard to the value of the property, as per Section 47-A of the Indian Stamp Act, he may, after registering the document, refer the same to the competent authority for ascertaining the correct market value of the property. He has

further submitted that if the second respondent intends to refer the matter to the first respondent under Section 47-A of the Indian Stamp Act, he can register and release the document after making necessary endorsement on the same. In support of his contention, he has relied upon various judgments of the learned Single Judge as well as Division Bench of this Court, wherein this Court has directed the registering authority to register and release the document with an endorsement that the release of the document would be subject to further proceedings that may be initiated under the provisions of the Indian Stamp Act. Thus, he sought for registration and release of the document in question.

5. I have also heard the learned Additional Government Pleader, who has taken notice on behalf of the respondents.

6. Considering the facts and circumstances of the case and considering the dictum laid down by this Court, this Court is of the opinion, that the second respondent has no right to retain the document and there is no provision under the Indian Stamp Act empowering the registering authority to retain the document without registration.

7. Hence, the second respondent is directed to register and release the document in question, with an endorsement that the release of the document would be subject to further proceedings that may be initiated under the provisions of the Indian Stamp Act. The said exercise shall be carried out within a period of two weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
सत्यमेव जयते
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

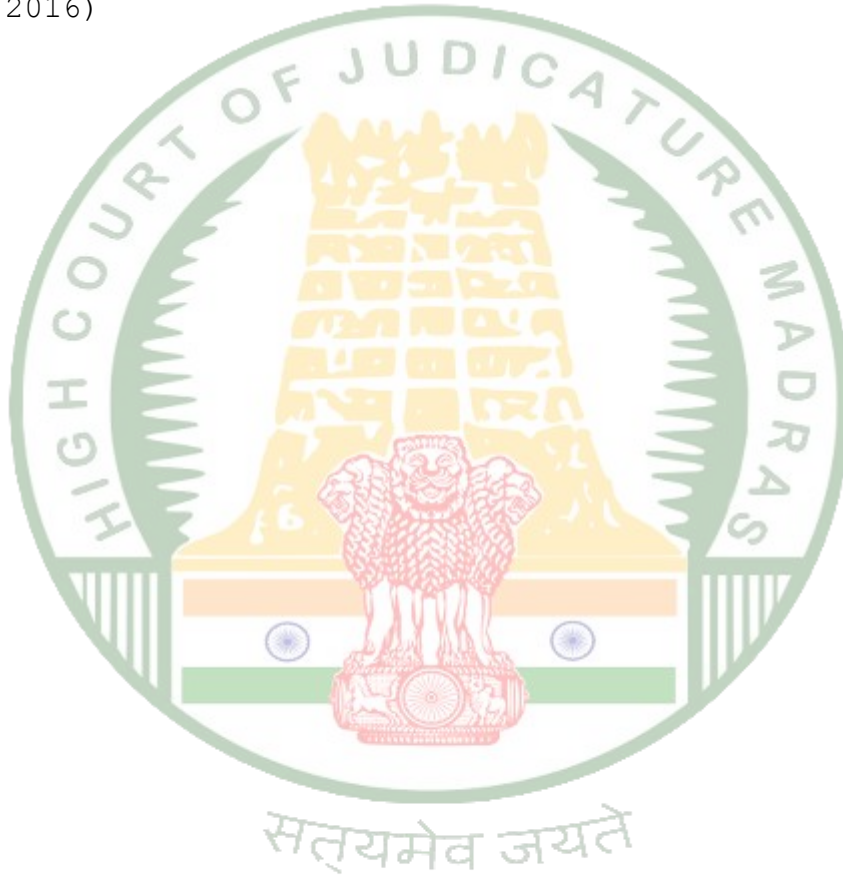
1.The District Registrar / Administration,
Chennai (Central).

2.The Sub Registrar,
No.1103, Poonamallee High Road,
Periamet, Chennai-3.

+1cc to Mr.N.Damodaran, Advocate, S.R.No.7894
+1cc to the Government Pleader, S.R.No.7956

W.P.No.4183 of 2016

skv (CO)
srg (12/02/2016)



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