



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.16883 of 2016

E.S.M.Gurusamy

... Petitioner

Vs.

The Sub Registrar,
Seithur Sub Registrar Office,
Rajapalayam Taluk,
Virudhunagar District.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus by calling for the records relating to the impugned Check Slip of the respondent herein dated 01.09.2016 and quash the same as illegal and arbitrary and consequently direct the respondent herein to accept and registrar the Agreement relating to Deposit of Title Deeds dated 31.08.2016.

For Petitioner : Mr.M.Thirunavukkarasu
For Respondent : Mr.N.S.Karthikeyan,
Additional Government Pleader.

ORDER

The petitioner is a owner of the properties in S.Nos.391/13, 57/1A in Chettiyarpatti Village, house bearing Door No.3A/2, in Seithur Village and house bearing Door No.53 in Madasamay Kovil Street, Chettiyarpatti Village.

2.According to the petitioner, he has obtained a loan to the tune of Rs.18,00,000/- from Karur Vysya Bank Limited, Rajapalayam Branch and created equitable mortgage by executing memorandum of deposit of title deeds on 21.01.2015. The said equitable mortgage deed was registered in the office of the respondent vide Document No.100/2015, dated 21.01.2015. Thereafter, he wants additional loan for the construction of second floor and the bank has also sanctioned additional loan amounting to Rs.16,75,000/- and directed the petitioner to create equitable mortgage by executing an agreement of depositing title deeds in favour of the bank. When the petitioner approached the respondent for registration of the said document, the respondent refused to register the said document stating that the property was already attached by the District Court in E.P.No.12 of 2015. Challenging the above said order, the present writ petition has been filed.



2. Learned counsel appearing for the petitioner would submit that mere attachment of property is not a bar for registering the equitable mortgage. In support of his contention, he has relied upon the following decisions of this Court:

(i) M. Chitra Vs. The Sub Registrar, Vadamadurai, Dindigul District in W.P(MD) No. 14388 of 2014, 01.09.2014 and

(ii) S. Praveen Bohra Vs. Joint-I, Sub Registrar (In the cadre of District Registrar), reported in 2016(3) CTC 493.

3. This Court in S. Praveen Bohra's case (supra), after relying upon the unreported decision of this Court in M. Chitra Vs. The Sub Registrar, Vadamadurai, Dindigul District in W.P(MD) No. 14388 of 2014, dated 01.09.2014, held as follows:-

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.

4. In view of the above settled legal position, the order passed by the respondent refusing to register the document on the ground that the property had been attached in the civil proceedings is not sustainable in law.

5. Accordingly, the writ petition is allowed by setting aside the order passed by the respondent dated 01.09.2016, consequently, the respondent is directed to register the document, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To
The Sub Registrar,
Seithur Sub Registrar Office,
Rajapalayam Taluk,
Virudhunagar District.

+1CC to M/S.M.Thirunavukkarasu, Advocate, SR.No. 52639

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sms
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