



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2016

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.19445 of 2016

M/s.Shankar Nagar Property Developers Pvt., Ltd.,
represented by its Managing Director,
K.S.Shankar Ganesh,
D-93, 1st Floor, 9th Cross,
Thillainagar, Tiruchirappalli 620 018. ... Petitioner

Vs.

The Sub Registrar,
Woraiyur Sub Registrar's Office,
Tiruchirappalli 620 018 ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records culminated in the impugned Checkslip order No.1/2016 dated 23.09.2016 issued by the respondent and to quash the same as illegal unenforceable ultravires without authority without jurisdiction void abinito and issue a direction by way of Mandamus directing the respondent to register the Memorandum of Deposit of Title Deeds dated 22.09.2016 executed by the petitioner.

For Petitioner : Mr.Shankar Murali
For Respondent : Mr.J.Gunaseelan Muthiah
Government Advocate.

ORDER

Challenging the order passed by the Sub Registrar, Woraiyur Sub Registrar's Office, Trichirapalli District, dated 23.09.2016 refusing to register the title deeds dated 22.09.2016 on the ground that the property in question was already attached by the Civil Court in O.S.Nos.16, 12 and 14 of 2016 on the file of the Principal District Court, Karur, 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 title deeds. 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 23.09.2016, 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 (T&P)

/True Copy/

Sub Assistant Registrar

To

The Sub Registrar,
Woraiyur Sub Registrar's Office,
Tiruchirappalli 620 018

+ 1 CC TO Mr.K.S.SHANKAR MURALI, ADVOCATE IN SR No. 61446
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 61660

SMS

TE/SK-SKN/SAR-III : 26/10/2016 : 3P/4C (IT)

Writ Petition (MD) No.19445 of 2016
18.10.2016