BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.04.2016
CORAM:
THE HON'BLE MR.JUSTICE B.RAJENDRAN
Writ Petition (MD) No.3359 of 2016
and
W.M.P(MD)No.2953 of 2016

V.Nagarajan .. Petitioner

Versus

1.The Joint Sub Registrar - I,
Kanyakumari District at Nagercoil..

2.The Commercial Tax Officer,
Nagercoil (Town) Assessment Circle,
No.131, Mead Street,
Nagercoil - 629 001. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the entire records in connection with the impugned proceedings of the second respondent dated 01.10.2015 in RC No.398/2015/A3 and that of the impugned proceedings of the first respondent dated 21.01.2016 and quash the said proceedings and consequently, direct the first respondent to remove the unnecessary endorsement made pursuant to the impugned proceedings of the second respondent in the Encumbrance Certificate.

For petitioner : Mr.R.Devaraj
For respondents : Mr.R.Karthikeyan A.G.P

O R D E R

This writ petition has been filed challenging the impugned proceedings of the second respondent dated 01.10.2015 in RC No.398/2015/A3 and that of the impugned proceedings of the first respondent dated 21.01.2016 and seeking a direction to the first respondent to remove the unnecessary endorsement made pursuant to the impugned proceedings of the second respondent in the Encumbrance Certificate.

2. The grievance of the petitioner is that the properties were originally owned by one Mrs.Regupathy ammal, wife of Mr.V.S.Kalayanasundaram. She executed a Will on 16.04.1998 bequeathing to two sons, namely, V.S.K.Radhakrishanan and V.S.K.Rajaram. As per the Will, 'A' schedule property is to be alloted to V.S.K.Radhakrishnan and V.S.K.Rajaram. As far as 'B' schedule is concerned, it is exclusively alloted to V.S.K.Radhakrishnan, the eldest son. The said Mrs.Regupathy ammal died on 23.04.1998 and thereafter, the respective properties devolved upon two persons absolutely. The petitioner was appointed as the Power of Attorney of both V.S.K.Radhakrishnan and V.S.K.Rajaram by a Power of Attorney dated 19.11.2013 on the file of Joint Sub Registrar - II, Kanyakumari at Nagercoil. Thereafter, the petitioner ploted out the property into 24 and executed sale deeds to various third parties on behalf of the principals. This has been done long back. Subsequently,

the said V.S.K.Radhakrishnan was carrying on the business under the name and style of V.S.Kalyanasundaram Auto Agency, which is the registered dealer under the Tamil Nadu General Sales Act and the subsequent enactments like Value Added Tax. Acccording to the petitioner, the said V.S.K.Radhakrishnan is now not traceable and his whereabout is not known and his wife Valarmathi was also a partner of the said business. His son, namely, Rajiv Radhakrishnan is a non-resident of India and he had exeucted a Power of Attorney dated 25.08.2014 and registered as document No.101 of 2014 in favour of the petitioner. V.S.K.Rajaram also exectued a Will on 29.01.2014 bequeathing his share, right, title and interest in favour of the brother's son Rajiv Radhakrishnan. The said V.S.K.Rajaram also died on 24.07.2014 and thus, the said Rajiv Radhakrishnan has become the absolute owner of the properties of V.S.K.Rajaram. While so, a letter dated 01.10.2015 was issued by the second respondent asking to furnish certain particulars for non payment of arrears towards entry tax by the said V.S.Kalyanasundaram Auto Agency. The petitioner gave the details, but he is not responsible for payment of the arrears. In this connection, it is pertinent to point out that out of the 2 Acres 17 cents, which is jointly owned by V.S.K.Radhakrishnan and V.S.K.Rajaram, V.S.K.Rajaram is entitled to 50%. As per the sale deed, out of the total extent of 2 Acre 11 cents, the sale has been effected long back in respect of 1 Acre 26 cents and the balance 91 cents are still available. Therefore, he had replied accordingly a letter dated 20.12.2015. But, he is not liable to pay any amount and his property cannot be attached and further, V.S.K.Radhakrishnan is a non-resident of India. Then, he received the letter dated 01.10.2015 from the second respondent stating that any further transaction in respect of the documents will be done only after the payment of the sales tax, namely, payable by V.S.K.Radhakrishnan. It prohibited further transaction. In fact, the petitioner has not been served with any notice and there is no attachment over the property. Therefore, the impugned order is wrong. Further, he would contend that in respect of the sale held by them much long ago, the present direction to implead as the encumbrance in the property is not correct. The purchasers are not in any way responsible or liable, as they have purchased much before the very transaction. Therefore, he would contend that both the impugned orders are liable to be set aside. In this connection, to show his bona fide, he will undertake before the this Court that the remaining 91 cents of land will not be in any way sold and it will be kept in tact with regard to the alleged arrears amount. Further, he would also undertake that there are various other properties in the name of the said V.S.K.Radhakrishan, which the department is always at all liberty to attach as well as bring the property for sale and as per the Will whatever the property which is available to him, that can be attached by the department.

3. Though no counter was filed, the respondent's counsel would contend that any due payable to the department should be treated as a charge that is why they have always sent a letter to the Sub-Registrar concerned not to effect any sale deed in respect of those property owned by defaulter and the impugned order has been passed. In this connection, he relied on a judgment of this Court reported in 2016 (1) CTC 75 (Kadhariya Oriental Nursery and Primary School vs. The Tamil Nadu Generation and Distribution Corporation Ltd.,).



4. Per contra, the petitioner would rely upon a Judgment reported in

2010 Writ L.R. 281 (M/s Sri Bakgyam Engineering Corporation vs. The Deputy Commericial Tax Officer) to contend that the bona fide purchaser, without notice of charge of the property, cannot be proceeded against the arrears of sales tax.

5. One thing is very clear in this case that the sale has effected long back and the arrears due to the sales tax department was much recent. The person, who conducted the business, is not traceable and is not available. He acquired property through Will dated 16.04.1998 out the property which has been allotted to him, total extent of 2 Acre 17 cents, which is owned by both the brothers, they sold long back 1 Acre 27 cents and the balance 91 cents are in tact, for which, the petitioner has given an undertaking affidavit that he will not encumber the property and he will not sell the same. The said undertaking is recorded.

6. Further, in the impugned orders itself they have stated that the other properties belonging to the persons, who are respondents, are available. Apart from that as rightly pointed out by the learned Additional Government Pleader, as per the Will dated 16.04.1998, further properties are also available. The Department is at also liberty to proceed against those properties. Therefore, the properties purchased by the various purchasers long back, as per the sale deed executed by the petitioner, cannot bear the encumbrance for default of the arrears payable to the respondents of recent origin. In this case, the encumbrance certificate presently given are now incorporated with the new endorsement as if, there are arrears due in respect of the properties. Therefore, insofar as the S.No.N7 21-2 alone, the encumbrance will not be noted, as they have now undertaken for the balance arrears. As far as the unsold portion, the encumbrance will continue, for the sold portion, it will not continue. As far as the future transaction is concerned, it is not prohibited insofar as the survey numer to the extent of 91 cents. As the per the Judgment reported in 2016 Writ L.R. 281 (cited supra), it is clearly stated that the bona fide purchaser cannot be put to trouble. Especially, in this case, where sale has taken place much long ago, this writ petition is allowed to this limited extent setting aside the impugned orders of the respondents to this limited extent only. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar.

To
1.The Joint Sub Registrar - I, Kanyakumari District at Nagercoil..
2.The Commercial Tax Officer,Nagercoil (Town) Assessment Circle,
No.131, Mead Street, Nagercoil - 629 001.
+1CC to M/S.R.Devaraj,Advocate, SR.No. 24122

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AM/AAL.MPA/SAR-II/06.06.2016/3P/4C