IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

W.P.No.8609 of 2017

O.Natarajan ..Petitioner

Vs

The Chief Manager,
United Bank of India,
90 Ramachandra Road, R.S.Puram,
Coimbatore 641 002. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to cancel the Memorandum of Deposit of Title Deed which was registered on the file of Sub Registrar Office, Suramangalam, Salem District on the basis of the petitioner's representation dated 02.03.2017 and consequently direct the respondent to pay the compensation of Rs.2,00,000/- to the petitioner.

For Petitioner : Mr.P.Tamilavel
For Respondent : Mr.P.S.Ganesh

ORDER

The petitioner has filed the above writ petition, to issue a Writ of Mandamus, directing the respondent to cancel the Memorandum of Deposit of Title Deed, which was registered on the file of the Sub

Registrar Office, Suramangalam, Salem District, on the basis of petitioner's representation, dated 02.03.2017, within a time frame and consequently, direct the respondent to pay compensation of Rs.2,00,000/- to the petitioner.

2. It is the case of the petitioner that one Sri Sai Exports, a proprietary concern availed two loans of Rs.50,00,000/- each from the respondent Bank in the year 2010. The petitioner stood as Guarantor of the above said loan transactions and gave his property in Town Survey No.151/10A5, measuring an extent of 2204 sq.ft of land together with building, situated at Alagapuram Pudhur Village, Salem Taluk, Suramangalam Sub District, Salem West District, as security.

3. Further, according to the petitioner, the loan accounts were settled in the year 2012 and the respondent Bank had returned the original Title Deed submitted by the petitioner at the time of execution of Memorandum of Deposit of Title Deed, dated 16.10.2009. However, the respondent has not canceled the Memorandum of Deposit of Title Deed. Therefore, the petitioner sent a representation to the respondent Bank. Under these circumstances, the petitioner has filed the present

writ petition.

4. The respondent has filed counter affidavit, wherein, they have stated that the liability of the principal Borrower and the Guarantor are co extensive and their liability is joint and several and the petitioner, being the Guarantor in the said two loan accounts cannot either seek discharge nor direct the bank to take steps only against the principal borrower.

5. According to the respondent, the respondent Bank also extended financial facilities to the petitioner as Principal Borrower and the petitioner had defaulted in repaying the loan amount for a sum of Rs.128 lakhs. The respondent had contended that since the petitioner had defaulted in repaying the loan amount, the Memorandum of Deposit of Title Deed was not canceled by the respondent Bank.

6. The Memorandum of Deposit of Title Deed was executed by the petitioner as per the provisions of Section 58(f) of the Transfer of Property Act, 1882 (for short, the "Act"). As per Section 58 (f) of the Act, where a person in any of the towns mentioned therein, delivers to

a Creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

7. On a reading of Section 58(f) of the Act, it is clear that the two ingredients necessary for the deposit of title deeds are that the borrower or the guarantor should deliver the documents of title, in respect of the immovable property to the creditor and the next ingredient is that there should be intention to create a security thereon.

8. In the case on hand, admittedly, the respondent Bank had returned the original title deed to the petitioner way back in the year 2012. However, the Memorandum of Deposit of Title Deed has not yet been canceled by the respondent Bank for the reasons stated in the counter affidavit. When the original documents of title deed were returned back to the petitioner, I do not find any reason for the application of the provisions of Section 58(f) of the Act at all. The main ingredient of deposit of title deed is not now available to the respondent Bank, without having the possession of the title deed. There cannot be any mortgage by deposit of title deeds.

9. Under these circumstances, the learned counsel appearing for the petitioner in support of his contention relied upon a judgment reported in **2015 -2-L.W. 792 [M/s.Sree Vadivambigai Ginning Industries Pvt. Ltd. and others v. M/s.Tamil Nadu Mercantile Bank Limited]**, wherein, this Court has held as follows:

> "5. The factual expose which arise for disposal of the present appeals are as follows:
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> [a] The plaintiffs, who have obtained a loan of Rs.37,27,000/- from the defendant Bank on equitable mortgage by depositing the title deeds, claim to have promptly repaid the loan as early as on 28.07.1998 and 17.08.1998. It is stated that the defendant also closed the account and issued 'No Due Certificate' to them on 19.06.1999. Thereafter, when the plaintiffs approached the defendant Bank for return of the title deeds deposited with them at the time of obtaining the loan, the Bank was delaying in returning the same inspite of assurance to give back the title deeds. Hence, the plaintiffs issued legal notice on 22.07.1999 for which a reply was received by them on 10.09.1999 from the defendant stating that the said documents could not be returned as another Company, which is alleged to be a sister concern of the plaintiffs, viz., Sree vadivambigai Textile Mills Limited at Sivaganga, had obtained loan from the Madurai Branch of the defendant Bank and since the outstanding was not paid by them, the documents deposited in the Pollachi Branch, by the plaintiffs were withheld as general lien over the documents. As the mortgages were discharged and the documents were not returned by the defendant Bank, the plaintiffs filed C.O.P.No.214 of 1999 before the District Consumer Dispurt Redressal Forum, Coimbatore.

However, the Original Petition was dismissed. Aggrieved by the non-delivery of title deeds despite all payments, the plaintiffs preferred to file the suit O.S.No.178 of 2006 for the relief of mandatory injunction.

[b] The defendant Bank, inter alia, contested the suit on the ground that the documents could not be returned as the same are held as general lien towards the liability of Sree Vadivambigai Textile Mills Limited, which is the sister concern of the plaintiffs.

[c] The plaintiffs also filed a reply statement contending that the said Sree Vadivambigai Textile Mills Limited is a separate entity in the eye of law and the documents furnished by them towards the loan obtained from the Pollachi Branch of the defendant Bank cannot be retained as collateral security for the outstanding due by their sister concern to the Madurai Branch of the defendant Bank. The plaintiffs also contended that having issued 'No Due Certificate', the retention of the documents with the defendant Bank is unlawful and hence, prayed for return of the documents."

10. Per contra, the learned counsel appearing for the respondent contended that in view of the recital in the Memorandum of Deposit of Title Deed to the effect that the security created by the parties to the documents shall be continuing security and shall ensure notwithstanding that at any time thereon accounts are brought to credit or the facility is reduced or enhanced and further shall ensure for any other financial facilities that the Borrower or the Guarantor may be granted by the Bank at any of their offices in India is concerned, the respondents are not liable to cancel the document.

11. Since, the title deeds were already returned to the petitioner / Borrower, there cannot be any mortgage by deposit of title deed as per Section 58 (f) of the Act. Therefore, only in the case of the respondent Bank having possession of the Title Deed of the documents, then they can press into service the recitals found in the Memorandum of Deposit of Title Deed, dated 16.10.2009. Therefore, the contention raised by the learned counsel for respondent cannot be accepted.

10. In these circumstances, I am of the view that when the respondent Bank had returned the original documents, they cannot now initiate any proceedings against the petitioner based on the Memorandum of Deposit of Title Deed, dated 16.10.2009. Therefore, the respondent is directed to cancel the Memorandum of Deposit of Title Deed, dated 16.10.2009 and return the same to the petitioner, within a period of six weeks from the date of receipt of a copy of this order. However, the order passed in this writ petition shall not stand in the way of the respondent Bank from initiating any proceedings against the petitioner for recovery of their loan amount.

M.DURAISWAMY, J

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11. With these observations, the writ petition is disposed of. No costs.

13.09.2017

Note : Issue the order copy on 18.09.2017

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To

The Branch Manager,
Axis Bank, Gudiyatham Branch,
Vellore District.

W.P.No.8609 of 2017