

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.15902 of 2017

M/s.Jyothi Laboratories Ltd.,
Rep. by its Managing Director,
Mr.M.P.Ramachandran ... Petitioner

vs.

1. Indian Overseas Bank,
(SSI North Branch),
Rep. by its Senior Manager, No.20, Ormes Road,
Kilpauk, Chennai - 600 010.
2. Indian Overseas Bank,
Rep. by its Chairman & Managing Director,
No.763, Annexe Building,
Central Office, 3rd Floor, Anna Salai,
Chennai - 600 002. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the 1st respondent to handover original sale deed 27.7.1956 vide Doc.No.2950/56 marked as Ex-8 in OA.No.42/2007 dated 18.6.2010 on the file of the Debts Recovery Tribunal-III.

For Petitioner : Mr.M.Praveen Kumar

For Respondents : Mr.F.Benjamin George (for R1 & R2)

ORDER

(Order of the Court was delivered by S.MANIKUMAR, J)

M/s.Jyothi Laboratories Limited, Chennai, has sought for a writ of mandamus directing the Indian Overseas Bank, Kilpauk, Chennai the 1st respondent, to hand over the original sale deed dated 27.07.1956, vide Doc.No.2950 of 1956, marked as Ex.A15 in O.A.No.42 of 2007 dated 18.06.2010 on the file of Debts Recovery Tribunal III, Chennai.

2. Facts deduced from the supporting affidavit and the material on record are that property measuring 89 cents comprised in S.No.190, Sembulivaram Village, No.115, Ponneri Taluk, Chengalpattu, MGR District, originally belonged to Mannarammal. The petitioner has purchased the property, vide sale deed dated 13.06.1997, registered as Document No.2997 of 1997, in the office of the Sub Registrar, Redhills. At the time of purchase, the original document was not handed over to the writ petitioner. When enquired, the petitioner was informed by the vendor Mannarammal that the same had been given to the Special Tahsildar for Land Acquisition, Saidapet, which was not returned.

3. Subsequently, when the petitioner wanted to put up a factory, one Mr.Bawarlal Gothi, Son of Lalchand Gothi and Mr.M.Chandran, obstructed to the same. Therefore, the petitioner was constrained to file O.S.No.147 1998 for declaration and injunction before the learned District Munsif, Ponneri. In the said suit, Mr.Bawarlal Gothi, contended that he had purchased the property from one K.G.Narasimhan, son of Mannarammal and vendor of the writ petitioner. After contest, the suit was decreed in favour of the writ petitioner.

4. While the matter stood thus, the writ petitioner received a notice from the Debts Recovery Tribunal - II, Chennai, in O.A.No.27 of 2005 filed by Indian Overseas Bank, for recovery of Rs.29,03,809/- from India Metal Enterprises, the 1st respondent therein, and others. In O.A.No.27 of 2005, the writ petitioner has been arrayed as the 9th defendant. Before the tribunal, in O.A.No.27 of 2005, the writ petitioner has entered appearance and filed counter. O.A.No.27 of 2005 on the file of the Debts Recovery Tribunal-II, Chennai has been transferred to Debts Recovery Tribunal-III, and renumbered as O.A.No.42 of 2007.

5. Indian Overseas Bank has contended that K.G.Narasimhan and his son K.Vasu, 2nd defendant in the OA, were partners of India Metal Enterprises and that they have obtained a Term Loan and Supply Bill Purchase Facility and the bank, vide letter dated 15.5.2000, sanctioned Term Loan of Rs.14 Lakhs and Supply Bills Purchase Facility of Rs.4 Lakhs and that on 04.07.2000, the 1st defendant therein, availed the same. As the borrower and guarantor, had defaulted in repayment, Indian Overseas Bank has filed O.A.No.27 of 2005, for recovery of the abovesaid sum.

6. In O.A.No.27 of 2005, the writ petitioner has further contended that the property purchased by them under sale deed dated 13.06.1997, registered as document No.2977 of 1997 on the file of the Sub Registrar, Redhills, has been shown as 'A' Schedule property in O.A.No.27 of 2005. The petitioner has further contended that K.G.Narasimhan has forged the death and

legal heir certificate of Mannarammal, the vendor and mortgaged the abovesaid property. Equitable mortgage of the said property, has been created in the year 2000. Whereas, it has already been sold in the year 1997 by Mannarammal, vendor of the petitioner. K.G.Narasimhan said to have availed loan also died, prior to filing of O.A.No.27 of 2005. Legal representatives of K.G.Narasimhan, son of Mannarammal, arrayed, as defendants 2 to 7 have failed to contest the OA. Defendant No.8 / guarantor also did not contest. All the above, were set exparte.

7. In the instant writ petition, the writ petitioner has further contended that after considering the entire material on record, the Debts Recovery Tribunal No.-III, Chennai, vide order dated 18.06.2010, has categorically found that K.G.Narasimhan, son of Mannarammal, had forged/fabricated the documents, more particularly, death and legal heir certificate of his mother. Mannarammal and thus, Indian Overseas Bank had obtained the mortgage, in a negligent manner. It is also the contention of the writ petitioners that the tribunal has further held that bank cannot have any charge over the property measuring 89 cents in Sembulivaram Village. The tribunal has dismissed O.A.No.42 of 2007, against the writ petitioner, purchaser of the abovesaid subject property. The writ petitioner has submitted that bank has not chosen to challenge the categorical finding of the tribunal, in O.A.No.42 of 2007 and no appeal has been filed.

8. The writ petitioner has further submitted that despite a categorical finding, as regards manner, in which the property has been mortgaged, while dismissing O.A.No.42 of 2007 vide order dated 18.06.2010, as against the writ petitioner, the Debts Recovery Tribunal-III, Chennai, has failed to pass any orders, regarding the return of original title deed, to the petitioner. Therefore, the petitioner was constrained to file M.A.No.22 of 2013 in O.A.No.42 of 2007 on the file of the Debts Recovery Tribunal-III, Chennai and the tribunal, directed return of the documents to the bank. Despite the abovesaid direction, the bank has not taken any steps to get the document from the tribunal, and hand over the same to the petitioner. The petitioner has further contended that though apprising the above facts, a request dated 04.09.2017, was also made, the bank has not responded. Left with no other alternative, petitioner has sought for a mandamus, as stated supra.

9. Before us, Indian Overseas Bank, Chennai has filed a detailed counter affidavit, admitting the fact of filing of O.S.No.147/98 on the file of District Munsif Court, Ponneri, filed by the writ petitioner and the decree granted by the Court, in favour of the writ petitioner. At paragraph No.5 of the counter affidavit, Indian Overseas Bank, Chennai has categorically admitted that the tribunal has recorded an adverse

finding, against the bank that the mortgage created over the said property was fake and fabricated, and consequently, the bank has no charge over the subject property, and accordingly dismissed the O.A., against the writ petitioner.

10. Indian Overseas Bank, Chennai has also admitted that when M.A.No.22 of 2013, was filed by the writ petitioner praying for a direction to handover the title deed to the writ petitioner, the Debts Recovery Tribunal-III, Chennai has directed the Registry of Debts Recovery Tribunal-III, Chennai, to return the documents to the bank. According to the bank, no direction was issued to return the document to the writ petitioner, but the direction of the tribunal was to the Registry to return the document to the bank.

11. Added further, Mr.F.Benjamin George, learned counsel for the bank, when the writ petitioner has not chosen to challenge the order made in M.A.No.22 of 2013 dated 11.02.2014, and the company cannot seek for a direction in this Court for issuance of a mandamus. He further submitted that the document is custodia legis. A writ of mandamus pre supposes the existence of a legal right and a corresponding obligation inherent on the part of the other side. According to him, inasmuch as the petitioner has no legal right to claim the document from the bank nor there is any obligation on the part of the bank to get the document from the Debts Recovery Tribunal and hand over the same to the writ petitioner, mandamus cannot be issued. He submitted that the petitioner has not impleaded the legal representatives of late K.G.Narasimhan in the present writ petition. It is Mr.K.G.Narasimhan, who had deposited the title deeds with the bank and therefore his legal representatives are necessary and proper parties. For the abovesaid reasons, he prayed for dismissal of the writ petition.

12. Heard the learned counsel for the parties and perused the materials available on record.

13. Indian Overseas Bank, Chennai has filed O.A.No.27 of 2005 (renumbered as 42 of 2007 on the file of DRT-III) before the Debts Recovery Tribunal-II, Chennai, for recovery of Rs.29,03,809/- against M/s.India Metal Enterprises, Chennai and eight others. M/s.Jothy Laboratories Limited, Chennai, the petitioner herein, has been arrayed, as the 9th defendant therein. Except the 9th defendant others, remained absent and were set exparte. After considering the rival submissions, of the bank and the 9th defendant therein/writ petitioner, the Debts Recovery Tribunal-III, Chennai in O.A.No.42 of 2007 dated 18.06.2010, has recorded a categorical finding that the bank has acted in a very negligent manner in obtaining mortgage security, based on the fabricated mortgage, in its favour, in respect of

'A' Schedule property. The tribunal has also recorded that the bank has no charge over 'A' schedule property. In the result, the tribunal has held that bank has not established the mortgage over the 'A' Schedule property and therefore, the same cannot be enforced. OA has been dismissed as against the 9th defendant.

14. Before the tribunal the 9th defendant/writ petitioner while praying for dismissal of the OA, on the grounds stated supra, has sought for a direction to the applicant bank to return the original document i.e. Sale Deed dated 27.07.1956 vide Doc.No.2950 of 1956 marked as Ex.A15 and for a permanent injunction restraining the bank from bringing 'A' schedule property for sale under SARFAESI Act, and to reject the OA, as not maintainable and costs.

15. Though, the tribunal has dismissed the original application as against 9th defendant/writ petitioner, there is no order for return of document to the petitioner, which necessitated the petitioner to file M.A.No.22 of 2013 in O.A.No.42 of 2017. Considering the prayer sought for, the tribunal vide order dated 11.02.2014, has directed the Registry to return the document to the bank. Both parties have been directed to approach the registry and thus, M.A.No.22 of 2013, has been closed.

16. As rightly contended by the learned counsel for the writ petitioner, finding of the tribunal that the bank has acted in a negligent manner in getting a mortgage, in its favour has not been challenged by way of an appeal. Further, the finding of the tribunal that the bank has no charge over 'A' schedule property has become final. True that the document has been pledged by K.G.Narasimhan, S/o. Manarammal vendor of the writ petitioner and that after considering the entire facts and evidence, the tribunal has recorded the abovesaid findings. Though bank has blamed the writ petitioner that the order dated 11.02.2014 has not been challenged by way of any appeal, taking umbrage under the maxim custodial legis, bank has not taken any steps to get the document from the tribunal.

17. The manner as to how the sale deed dated 27.07.1956 vide Doc.No.2950 of 1956 marked as Ex.A15, came to be pledged with the bank has also been considered by the tribunal in O.A.No.42 of 2007. On the application filed by the petitioner for return of document, the tribunal has directed the Registry to return the document to the bank, and permitting both parties to approach the Registry. Despite the directions, the bank has not approached the Registry, nor there is any material indicating that the petitioner has requested the Registry, to return the document.

18. Admittedly, by virtue of the sale deed dated 13.09.1997 registered as Document No.2997 of 1997, executed by Mr.Mannarammal and registered in the office of the Sub Registrar, Redhills, the petitioner has become the owner of the properties, mortgaged with the bank and the tribunal has given a categorical finding that the mortgage has been fabricated and the same has become final. While that be the case, bank has no lien over the documents pledged, nor can invoke the defence of custodia legis. On the facts and circumstances of this case, in our view, the very purpose of issuing a direction to the Registry to return the documents to the bank, is to hand over the same to the lawful owner, the applicant before the tribunal i.e., the petitioner herein, who before the tribunal, has narrated, as to how the original sale deed was retained by the vendor and subsequently, manipulated by K.G.Narasimhan, son of the vendor of the writ petitioner, to create mortgage over the property owned by the petitioner.

19. Contention that the writ petitioner has not impleaded the legal heirs of the deceased, K.G.Narasimhan, cannot be countenanced for the reason that they have not chosen to contest the OA nor any material is placed before this Court that they have challenged the exparte order.

20. When the tribunal has recorded a categorical finding that the mortgage created was fake and consequently, the bank has no charge over the property, it is not open to the bank to invoke, 'custodia legis'.

21. When the lawful owner of the property, whose document has been pledged, without his knowledge, proves the same, before a Court of law or forum, then, he has every right to seek for return of the same, from the bank, with whom it is pledged; and the bank has a corresponding duty to return the same. The maxim 'custodia legis', can be applied, pending litigation. In the case on hand, inspite of directions to the Registry to return the document to the bank, the latter has not chosen to get the same from the Registry, even after the litigation has reached finality. When the Registry has been directed to return the documents, the Registry should have carried out the directions of the tribunal, and returned the document to the bank. The Registry of Debts Recovery Tribunal, has failed to implement the judicial order. Equally, taking umbrage on the maxim 'custodia legis', the bank has failed to perform its obligation.

22. Though, Mr.F.Benjamin George, learned counsel for the bank submitted that the manner as to how such a mortgage is created is being enquired into by the bank, we are not inclined to accept the said contentions for the reason that the tribunal has passed an order in the year 2010. Even after three years

from the date of passing of the order made in M.A.No.22 of 2013 i.e 11.02.2014, the bank has kept quite. Further there are no materials in the counter affidavit as to what investigation or enquiry has been conducted or being conducted, as regards the manner, in which the mortgage was created.

23. For the reasons stated supra, there shall be a writ of mandamus directing the bank to get the document, pertaining to sale deed dated 27.07.1956 vide Doc.No.2950 of 1956 marked as Ex.A15, from the Debts Recovery Tribunal-III, Chennai and handover the same to the petitioner within one month from the date of receipt of a copy of this order. Writ petition is allowed.

24. Considering the attitude of the bank, while allowing the writ petition, we deem it fit to impose a cost of Rs.10,000/- to be paid to the writ petitioner, within the abovesiad period.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ars

To

1. The Debts Recovery Tribunal-III, Chennai.
2. The Senior Manager,
Indian Overseas Bank, (SSI North Branch),
No.20, Ormes Road,
Kilpauk, Chennai - 600 010.
3. The Chairman & Managing Director,
Indian Overseas Bank,
No.763, Annexe Building,
Central Office, 3rd Floor, Anna Salai,
Chennai - 600 002.

+1cc to Mr.F.Benjamin George, Advocate, S.R.No.49949

W.P.No.15902 of 2017

PA(CO)
CS/09/08/17