



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.A(MD)No.1388 of 2017

WEB COPY

1.The Deputy Registrar,
Office of Co-operative Deputy Registrar,
No.3, DD Road,
Mani Nagaram,
Virudhunagar District.

2.The President,
N.N.697, Co-operative Housing Society Ltd.,
Bhuvaneshwari Amman Temple Back Side,
Tiruppathur Road,
Devakottai Taluk,
Sivagangai District.

3.The Secretary,
N.N.697, Co-operative Housing Society Ltd.,
Bhuvaneshwari Amman Temple Back Side,
Tiruppathur Road,
Devekottai Taluk,
Sivagangai District.

.. Appellants/Respondents

.vs.

A.Josbin

..Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order passed in W.P(MD)No.17269 of 2017 dated 13.09.2017 and allow the Writ Appeal.

Prayer in WP(MD). 17269/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus directing the respondents to return the Original Sale deed bearing Document No.1415 of 1996 on the file of the Sub Registrar, Devakottai by considering the petitioners representation dated 12.08.2017 within the stipulated period.

For Appellants

:Mr.J.Gunaseelan Muthiah

JUDGMENT

[Judgment of the Court was made by **M.VENUGOPAL., J.**]

<https://hcservices.courts.gov.in/hcservices/> heard the Learned Counsel for the Appellants/Petitioners.



2. To avoid an avoidable delay, notice to the Respondent/Writ Petitioner, is dispensed with.

3. The Appellants/Respondents have preferred the instant intra-Court Writ Appeal as 'Aggrieved Persons', as against the order dated 13.09.2017 in W.P(MD)No.17269 of 2017 passed by the Learned Single Judge.

4. Earlier, the Learned Single Judge, while passing the impugned order in W.P(MD)No.17269 of 2017 dated 13.09.2017 at Paragraph No.3, had observed the following:

"3.The petitioner had mortgaged his property with the respondent society on 04.10.2000, during which he had given the original documents to the second and third respondent. Subsequently, on 06.10.2015, the petitioner had paid the entire loan amount. The third respondent/Secretary of N.N.697, Cooperative Housing Society Limited had also executed a receipt for the same and the said document was also registered as Document No.4095 of 2015 on the file of the Sub Registrar, Devakottai on 18.12.2015."

5. Further, at Paragraph No.7 of the said order, the Learned Single Judge had proceeded to state the following and disposed of the Writ Petition without costs:

"7. Considering the limited scope of the prayer sought for by the petitioner, this Court hereby directs the third respondent to consider the representation of the petitioner and return the original sale deed bearing Document No.1415 of 1996 on the file of the Sub Registrar, Devakottai, to the petitioner within a period of one week from the date of receipt of a copy of this order."

6. Assailing the correctness, validity and legality of the impugned order dated 13.09.2017 passed by the Learned Single Judge, the Appellants/Respondents have preferred the present Writ Appeal mainly contending that the Learned Single Judge had not provided an opportunity to the Appellants to submit their objections as to why they had not released the original sale deed.

7. Advancing his arguments, the Learned Counsel for the Appellants contends that the Learned Single Judge failed to appreciate the financial position of the Society viz., N.N.697, Co-operative Housing Society, Devakottai. Furthermore, the Society for more than 16 years had not issued any loan to the outsiders. Moreover, the Learned Single Judge had failed to take into account the non-payment of salary to employees of the Society for the past 20 months and in fact, the employees are working without salary.



8. It is to be borne in mind that Section 58(a) of the Transfer of Property Act, 1882, enjoins that a mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. In fact, Section 60 of the Act speaks of 'Right of Mortgagor to redeem'.

9. Admittedly, the Respondent/Petitioner, had mortgaged his property with the Appellants 2 & 3/Society on 04.10.2000 and submitted original documents before the Second and Third Appellants. At later point of time, viz., on 06.10.2015, the Respondent/Petitioner had wiped out the entire loan amount. In reality, the Third Appellant/Third Respondent/Housing Society had executed a Receipt for wiping of the loan amount and also, a document also was registered on 18.12.2015 on the file of Sub-Registrar, Devakottai bearing Document No.4095 of 2015.

10. In view of the fact that the Respondent/Petitioner as mortgagor has wiped out the outstanding loan, this court is of the considered view that the original document relating to the property of the Respondent/Petitioner cannot be withheld by anyone, much less anyone of the Appellants.

11. Viewed in that perspective, this Court comes to an inescapable conclusion that the view taken by the Learned Single Judge in directing the Third Appellant to consider the Respondent/Petitioner's representation 12.08.2017 and further ordering return of original sale deed bearing Document No.1415 of 1996 on the file of the Sub-Registrar, Devakottai, within a period of one week from the date of receipt of a copy of the order, is free from any flaw. Viewed in that perspective, the Writ Petition sans merits.

12. In fine, the Writ Appeal is dismissed. However, on the request of the Learned Counsel for the Appellants, one month time is granted to the Third Appellant/Third Respondent, to return the original sale deed bearing Document No.1415 of 1996, to the Respondent/Petitioner without any further delay or precipitating the matter any further. No Costs.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar



To

1.THE DEPUTY REGISTRAR,
OFFICE OF CO-OPERATIVE DEPUTY REGISTRAR,
NO.3, DD ROAD MANI NAGARAM,
VIRUDHUNAGAR DISTRICT.

2.THE PRESIDENT,
N.N.697 CO-OPERATIVE HOUSING SOCIETY LTD.,
BJUVANESHWARI AMMAN TEMPLE BACKSIDE THIRUPPATHUR ROAD,
DEVAKOTTAI TALUK,
SIVAGANGAI DISTRICT.

3.THE SECRETARY,
N.N.697 CO-OPERATIVE HOUSING SOCIETY LTD.,
BJUVANESHWARI AMMAN TEMPLE BACKSIDE THIRUPPATHUR ROAD,
DEVAKOTTAI TALUK,
SIVAGANGAI DISTRICT.

+1cc to Mr.J.GUNASEELAN MUTHIAH,Advocate,SR.85645

W.A(MD)No.1388 of 2017
07.11.2017

PM
KK/SKN RSK/SAR 1/07.11.2017/ 4P- 5C/