

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

TUESDAY THE 21ST DAY OF AUGUST 2018

THE HON'BLE DR.JUSTICE ANITA SUMANTH

Application No.222 of 2018

in

I.P. NO. 91 of 1998

In the matter of Presidency
Town Insolvency Act, III of
1909 in the matter of

1. B.V. Saraswathy
2. Seenan
3. Dilli
4. Raja
5. K.S. Vijayalakshmi
6. Kesavan
7. Padma

...Debtors

IP No. 91 of 1998

E. Balu
S/o. Late Ellappa Nattar,
residing at No.24,
Ella Kandappan Street,
Chennai - 600 003.

... Petitioner / Petitioning Creditor

-Vs-

1. B.V. Saraswathy
2. Seenan
3. Dilli
4. Raja
5. K.S. Vijayalakshmi
6. Kesavan
7. Padma

All are residing at No.2, Singannan Street,
Chennai - 600 003.

... Respondents / Debtors

Appln.No. 222 of 2018

2. E.Suganthi,
W/o.N.Elamaran,
Both are residing at NO.AP 252,
Kambar Kudiyiruppu, Anna Nagar West,
Chennai-40. ... Applicants/Purchasers

-VS-

The Official Assignee
High Court, Madras. ... Respondent

Application praying that this Hon'ble Court be pleased to direct the Learned Official Assignee to execute a fresh sale deed in lieu of the sale deed executed in 04.04.2013 in respect of the immovable property situate at No.11 & 11A, (New No.24, then No.2) on eastern row of Singanna Street, Edapalayam, Park Town, madras, morefully described in the schedule to the accompanying Judges Summons.

The above application coming on this day before this Court for hearing in the presence of Mr.P.L.Narayanan, advocate for the applicants/purchasers herein, Mr.Vasantha Kumar, Deputy Official Assignee for the Official Assignee of this Court, the respondent herein and Mr.Babu, advocate for the petitioning creditor in IP.No.91 of 1998 and upon reading the Judges Summons and the affidavit of N.Elamaran and the Report of the Official Assignee dated 11.08.2018 filed herein;

The Court made the following order:-

This application prays for a direction to the Official Assignee to execute a fresh sale deed in lieu of sale deed dated 04.04.2013, relating to immovable property situated at 11 & 11-A (New No. 24, then No. 2) on the Eastern Row of Singanaa Street, Park Town, Madras (in short 'schedule property').

2. Heard Mr.PL.Narayanan, learned counsel for the applicants, Mr.Babu, learned counsel for the petitioning creditor and Mr.Vasanthakumar, Deputy Official Assignee.

3. The applicants are bonafide purchasers of the schedule property, sold by the Official Assignee in a public auction conducted on 21.10.2010. The property comprised part of the estate of B.V. Saraswathi and others who had been adjudged insolvent by this Court on 15.02.1999 in I.P. No. 91 of 1998.

4. Pursuant to the auction, the applicants, who were the successful bidders remitted the entire sale consideration of a sum of Rs.1,33,00,000/- to the Official Assignee and a sale deed dated 04.04.2013 was executed conveying the aforementioned property to the applicants.

5. There is no dispute that the entire sale consideration has been received by the Official Assignee and is presently in their possession.

6. The sole issue arising in the application relates to the registration of sale deed dated 04.04.2013. The applicants have according to them, inadvertently not registered the sale deed within the statutory period

provided. As such, they seek the indulgence of this Court to direct the Official Assignee to execute a fresh sale deed in lieu of the sale deed that was left unregistered.

7. The explanation of the applicants is that they were of the erroneous view that registration of the Deed was not compulsory seeing as the transaction of sale was pursuant to an order of Court. It was only when they approached the Municipal Authorities recently for mutation of records that the applicants came to understand that such mutation would be possible only if the transaction had been registered.

8. A report has been filed by the Official Assignee. Reference is made to Sections 23 and 25 of the Registration Act 1908 (in short 'Act'). Section 23 sets out the statutory time limit for presentation of documents for the purpose of registration, being four (4) months from the date of its execution. Section 25 provides that where the documents have not been presented within a period of 4 months as provided for in Section 23, the Registrar may direct registration upon imposition of a fine not exceeding 10 times the amount of proper registration fee.

9. According to the Official Assignee the fact that the sale deed has to be registered had been duly communicated to the applicants and a letter had been addressed to the Sub-Registrar Office, Sowcarpet for the purpose of such registration, even along with the sale deed.

10. Having said so, no serious objection is raised by the Official Assignee to the grant of the prayers sought

for by the applicants, subject to imposition of costs.

11. Having heard the submission of both parties, I am inclined to allow the application putting the applicants to appropriate terms.

12. Admittedly the sale of the property has been ordered by this Court on 13.07.2009. A report of the Official Assignee dated 19.11.2009 states that sale by auction was conducted on 12.11.2009 after due publication and sale of the property was effected to the present applicants for a sum of Rs.55.00 lakhs. A sum of Rs.13.75 lakhs being 25% of the bid was initially remitted.

13. A.No.353 of 2010 was filed by the Official Assignee seeking confirmation of sale in favour of the present applicants. Vide order dated 23.08.2010 the application was dismissed granting liberty to the Official Assignee to conduct a fresh auction on 21.10.2010. The applicants herein were once again the successful bidders having bid a sum of Rs.1.33 crores in respect of the schedule mentioned property. In addition to a sum of Rs.13.75 lakhs that had been deposited earlier by the present applicants pursuant to the first auction, a sum of Rs.19.50 lakhs, in all amounting to 25% of the auctioned value, was deposited.

14. A.No.9 of 2011 was thereafter filed by the Official Assignee seeking confirmation of sale. The applicants sought additional time for remittance of the balance of the sale amount which was accepted by this Court

granting time till 30.06.2012. According to the report of the Official Assignee dated 11.08.2018, the entire sale consideration had been paid even prior to the time granted by this Court.

15. The Supreme Court in the case of *B.Arvind Kumar V. Govt. of India and others* ((2007) 5 SCC 745) settles the position that when a property is sold by public auction in pursuance of an order of the Court and such sale is confirmed by the Court in favour of the purchaser the sale becomes absolute and the title to the property would vest with the purchaser. The Bench further holds that upon confirmation of such sale and receipt of a sale certificate evidencing such sale, no further deed of transfer is contemplated or required. The sale certificate issued by the Court does not require registration in terms of the exclusion provided under Section 17(2)(xii) of the Registration Act, 1908 to a certificate of sale granted to a purchaser of a property under public auction by a Civil or Revenue Officer.

16. In the present case, the sale conducted in public auction has been confirmed by this Court by order dated 18.10.2011. However, no sale certificate has been issued, thus necessitating a document of conveyance of title to be executed separately by the parties. In the light of the aforesaid position, particularly the confirmation of sale by this Court on 18.10.2011 and the admission by the Official Assignee to the effect that the sale consideration

has been received in full, I am of the view that the reasons for non-registration of the document at the first instance are acceptable and the prayer sought liable to be granted upon imposition of costs of Rs.1,00,000/- (Rupees one lakh only) upon the applicants and payable to the Official Assignee forthwith by way of Demand Draft.

17. The Official Assignee is directed to execute a new sale deed in respect of the schedule property in favour of the applicants within a period of two weeks, from date of receipt of the above Demand Draft.

18. The application is allowed in the aforesaid terms.

SCHEDULE OF PROPERTY

All that piece and land and building bearing Door No.11 & 11A, (New No.24 then 2) on the Eastern row of Singanna Street, Edapalayam Park Town Madras bounded on the North By - Govindasmay Chetty's House, R.S.No.8792/1, 8792/2, 8836 & 8835 on the South By - Rangaramanujam's House R.S.No.8794, on the East by - Inhabitant's House R.S.No.8834 & 8833 and on the West by - the said Singanna Street R.S.No.8791 & bearing Old S.No.1312, Resurvey No.8793 and comprised in Collector's Certificate No.1029 and having a total measurement of 1216 Sq.ft or thereabouts and situated within the Registration District of Madras and Sub District

of Sowcarpet.

Bounded on the :

North By : Govindasamy Chetty House

South By : Rangaramanujam House

East By : Inhabitant's house

West By : Singannan Street

WITNESS, THE HON'BLE SHRIMATI, VIJAYA KAMLESH
TAHILRAMANI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID
THIS THE 21ST DAY OF AUGUST 2018.

SD/- (I/C)
ASSISTANT REGISTRAR (OS-I)

//CERTIFIED TO BE TRUE COPY//
DATED THIS THE DAY OF 2018

MANAGER
INSOLVENCY OFFICE

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HIGH COURT , MADRAS

Application No. 222 of 2018

in

I.P.No. 91 of 1998

THE HON'BLE DR. JUSTICE

ANITA SUMANTH

ORDER DATED: 21/08/2018

FOR APPROVAL:08/10/2018

APPROVED ON :08/10/2018

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COPY TO:

THE OFFICIAL ASSIGNEE
HIGH COURT,MADRAS