

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.8306 of 2018

Riyaz Ahmed

.. Petitioner

-vs-

1.The District Registrar,  
Salem West District,  
No.27-C, 1<sup>st</sup> floor,  
Ramasundaram Street,  
Salem - 636 001.

2.The Sub Registrar,  
Sub Registrar Officer,  
No.95/412 Mullai Nagar,  
Near Sai Babu Temple,  
Suramangalam,  
Salem District 636 005.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the refusal order dated 12.03.2018 on the file of the 2<sup>nd</sup> respondent in respect of the 2<sup>nd</sup> simple mortgage deed dated 12.03.2018 and to quash the same and direct the respondents to register the second simple mortgage deed executed by the petitioner in favour of Mrs.Devi in respect of house site bearing No.23, Indane Nagar, (Jagir Reddypatti) Ammapalayam Village, within the Corporation of Salem S.No.81/3A relating to Patta No.2172 of an extent of 2003 sq. ft together with RCC Roof Thatched house.

For Petitioner :: Mr.R.Ramakrishnan

For Respondents :: Mr.V.Jayaprakash Narayanan,  
Spl. Govt. Pleader

ORDER

This writ petition is directed against the impugned order dated 12.03.2018, passed by the Sub Registrar, Salem District, second respondent herein, rejecting the request of the

petitioner to go for a second mortgage of the same property, which was the subject matter of mortgage on 14.03.2013, in favour of Sundaram BNP Paribas Home Finance Limited.

2. The learned counsel appearing for the petitioner would submit that the petitioner has executed the mortgage on 05.04.2013 by deposit of title deeds with M/s.Sundaram BNP Paribas Home Finance Limited for a sum of Rs.42,92,853/- (Rupees Forty Two Lakhs Ninety Two Thousand Eight Hundered and Fifty Three only). Since then he has been paying the monthly installments towards the said loan and after regular payment of the installments, the said amount has been reduced to Rs.36,62,076/- (Rupees Thirty Six Lakhs Sixty Two Thousand and Seventy Six only). The petitioner is not in possession of sufficient income to pay the monthly installments and in order to augment his source of income by developing his business, he intended to create a second mortgage in respect of the same property. Therefore, he has executed another mortgage deed in favour of Mrs.Devi, for a sum of Rs.35,00,000/- (Rupees Thirty Five Lakhs only) and the said amount has been received only to discharge the loan amount obtained from Sundaram BNP Paribas Home Finance Limited on 05.04.2013.

3. The learned counsel appearing for the petitioner has further submitted that when the second mortgage was executed in favour of Mrs.Devi on 06.03.2018, the petitioner has intimated the said factum to the first mortgagee i.e., Sundaram BNP Paribas Home Finance Limited. However, the second respondent refused to register the second mortgage on the ground that there is an equitable mortgage in favour of Sundaram BNP Paribas Home Finance Limited. The petitioner is entitled to create second mortgage over the same property, as there is no prohibition by law in creating the second mortgage and the same is not going to prejudice the first mortgage. Adding further, he has stated that since law permits the first mortgagee, who stand on priority basis and the charge on the said property by virtue of the first mortgage, cannot be defeated by the second mortgage. Therefore, the second respondent ought not to have passed the impugned order.

4. Heard the learned Special Government Pleader appearing for the respondents.

5. This Court is unable to find any error or infirmity in the impugned order passed by the second respondent. Admittedly, in the present case, the petitioner has executed the first mortgage on 05.04.2013 by deposit of title deeds in respect of the immovable property viz., House site bearing No.23, Indane Nagar, (Jagir Reddypatti), having an extent of 2003 sq. ft., and borrowed a sum of Rs.42,92,853/-. Since the said amount has not

been discharged, as rightly held by the second respondent, the petitioner cannot go for second mortgage over the very same property. Therefore, this writ petition is liable to be dismissed.

6. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-  
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vsm  
To

1.The District Registrar,  
Salem West District,  
No.27-C, 1<sup>st</sup> floor,  
Ramasundaram Street,  
Salem - 636 001.

2.The Sub Registrar,  
Sub Registrar Officer,  
No.95/412 Mullai Nagar,  
Near Sai Babu Temple,  
Suramangalam,  
Salem District 636 005.

+1cc to Government Pleader Sr.No.26804

sm:24.4.2018

W.P.No.8306 of 2018

सत्यमेव जयते  
WEB COPY