

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.16340 of 2012 &
M.P.No.1 of 2012

R.Vikram .. Petitioner

Vs.

1.The Chief Manager, Canara Bank,
Pollachi Branch, New Scheme Road,
Pollachi, Coimbatore District.

2.S.Latha

3.A.P.Balakrishnan

4.R.Jaya

5.R.Jansi .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in proceedings number MS CR:VR:DOC:2012 and quash the same as illegal, Unconstitutional, incompetent and without jurisdiction and further direct the 1st respondent to return the original title deeds as per the recitals in the deed of cancellation dated 14.09.2010.

For Petitioner .. Mr.V.Raghavachari
For Respondents.. No appearance for R1 to R4
R5- Died.

ORDER

The petitioner has approached this Court seeking the following relief:

"To issue a writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in proceedings number MS CR:VR:DOC:2012 and quash the same as illegal, Unconstitutional, incompetent and without jurisdiction and further direct the

1st respondent to return the original title deeds as per the recitals in the deed of cancellation dated 14.09.2010."

2. The petitioner along with respondents 2 to 5 has taken loan from the 1st respondent Bank for agricultural purpose. The petitioner being a power of attorney executed all the required documents and also deed of mortgage on taking loan from the first respondent Bank. Admittedly, the entire loan amount has been cleared in 2010 and a deed of cancellation was also executed by the bank on 14.09.2010. The said document was also registered in Document No.3868 on the file of the Sub Registrar, Aanamalai. Since the loan obtained by the petitioner had been fully discharged and cancellation of mortgage was also effected, the petitioner requested the first respondent bank for return of original documents in respect of the mortgaged property.

3.However, the request of the petitioner was not considered and the documents were not returned by the Bank on the ground that there was a dispute raised by the second respondent in regard to entitlement of the return of documents to the petitioner and a partition suit was also pending before the Civil Court. In these circumstances, the petitioner had approached this Court in W.P.No.23797 of 2010 and the said petition was disposed of on 21.01.2011, directing the parties to appear before the Bank Officials on 09.02.2011 and the first respondent bank was directed to conduct enquiry and return the documents. Despite the direction, the documents were not returned.

4.Thereafter, the petitioner has once again approached this Court in W.P.No.9255 of 2011 and this Court, once again after considering the plea of the petitioner, had disposed of the petition on 02.01.2012 with the following direction:

"6. For the reasons stated above, this writ petition is allowed. The impugned order is set aside and the case is remanded back to the Canara Bank, New Scheme Road, Pollachi, for taking a final decision on the request for redemption of mortgage and return of documents. The need should be done after hearing both the parties and passing a detailed speaking order within a period of two months of the receipt of certified copy of this order. The parties are directed to appear before the Manager, Canara Bank, New Scheme Road, Pollachi on 30.01.2012.No costs."

5.While passing the above direction, this Court had taken note of the earlier direction passed by this Court in the aforesaid writ petition.

6. Pursuant to two directions by this Court in the above said writ petitions, the parties had appeared and on behalf of the petitioner, his representative was present and requested the return of document. However, by impugned communication dated 07.03.2012, the claim of the petitioner was once again rejected on the ground that the matter was sub judice before the Civil Court and also in view of the objection given by the second respondent, who is none other than the sister of the petitioner and the other private respondents, have no objection to return the documents to the petitioner.

7. Although notices have been served on the respondents and the names of the respondents were printed in the cause list, none appeared for the respondents when the matter was listed on 02.01.2018. Therefore, the respondents were set ex parte and the matter was directed to be listed on 01.01.2018, for ex parte orders. Even today, there is no representation for the respondents.

8. Be that as it may, this Court, on two earlier occasions directed the first respondent Bank to pass a final decision in the matter after calling upon the parties for enquiry, however, the first respondent bank, despite the fact that all the parties had appeared, did not pass final order and shirked its responsibility by stating the matter is before the Civil Court and also objection raised by the second respondent. Mere pendency of the Civil litigation as between the parties, cannot empower the bank to withhold the release of the original documents to the petitioner, who had admittedly executed the mortgage deed at the time of obtaining the loan. It is always open to the disputing parties to obtain necessary orders from the competent Civil Court in establishing her or their right to receive the documents. But in the absence of any such order, from the competent Civil Court, there is no justification on the part of the first respondent Bank to withhold the documents while admitting the fact that the loan has been fully discharged by the petitioner.

9. In spite of this Court passing orders on earlier two occasions directing the Bank passing final order, it is unfortunate that the first respondent bank has not passed final orders. Therefore, this Court is left with no option, except to direct the first respondent bank to release all the original documents which were submitted at the time of mortgaging the subject property, to the petitioner. It is open to the first respondent Bank to obtain undertaking from the petitioner that

such return of the documents is subject to the outcome of the civil litigation pending before the competent Civil Court. The first respondent Bank is, therefore, directed to complete the entire exercise within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above direction, this Writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To
The Chief Manager, Canara Bank,
Pollachi Branch, New Scheme Road,
Pollachi, Coimbatore District.

+ 1 cc to Mr.V. Ragavachari, Advocate SR.755

W.P.No.16340 of 2012
&
M.P.No.1 of 2012

(CS-DR)
EU(09/02/2018)