

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17526 of 2017

K.Kailasam ... Petitioner

vs.

1. The Sub Registrar,
Perundhurai,
Erode District.

2. Canara Bank,
Rep by Authorized Officer,
Asset Recovery Management Branch,
Coimbatore. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus calling for the records of the 1st respondent culminating in its order in check memo No.5/2017 dated 29.06.2017 and quash the same and direct the 1st respondent to register the document, namely, cancellation of sale certificate dated 28.06.2017 by the 2nd respondent cancelling the sale certificate dated 27.08.2010 issued in favour of Sri Laxshimi Hardwares which was registered as document No.1792 of 2011.

For Petitioner : M/s. S. Muthukrishnan

For Respondents: Mr.P.P.Purushothaman for R1

Government Advocate

Mr.V.Adhivaradan for R2

O R D E R

The order passed by the Sub-Registrar rejected the claim of the writ petitioner for cancellation of the sale certificate issued in favour of the auction purchaser is under challenge in this present writ petition.

2. The learned counsel for the writ petitioner states that, the writ petitioner was the borrower and

availed the loan facility from the 2nd respondent bank. However, he committed default in repayment and action was taken by the bank under the provisions of SARFAESI Act, 2002.

3. The property belongs to the writ petitioner was sold by way of auction and auction purchaser on payment of the consideration got the sale certificate registered in his favour. A sale certificate issued in favour of the auction purchaser was also registered by the Sub-Registrar concerned. Thus, the title in respect of the property had been transferred in favour of the auction purchaser.

4. The learned counsel for the petitioner states that, the petitioner thereafter challenged the same before the court of law and finally succeeded and accordingly the sale certificate issued in favour of the auction purchaser was set aside by the courts. Consequently, the consideration paid by the auction purchaser was also settled by the 2nd respondent bank in entirety. Now the authorized officer also executed a deed of cancellation. Thus, the writ petitioner made an application before the Sub-Registrar, Perundhurai to register the cancellation deed in respect of the sale certificate registered in favour of the auction purchaser.

5. This Court is of an opinion that, the auction purchaser is not a party before the court in the present writ petition. This apart, the transaction between the auction purchaser, bank and the writ petitioner cannot be adjudicated in the present writ petition, since the petition is filed for registration of the cancellation of sale certificate issued in favour of the writ petitioner. Such a registration can be done normally with the consent of all the parties concerned. The claim of the writ petitioner is that the auction purchaser had received the entire consideration paid by him and the cancellation of sale certificate was also executed by the authorized officer, pursuant to the orders passed by this court. Thus the auction purchaser may not turn back for the purpose of extending consent or to sign the registration to be done by the Sub-Registrar. Under these circumstances, the Sub-Registrar has to register the certificate in the absence of the auction purchaser.

6. This court is of an opinion that, all these factual details are to be inquired into by the Sub-Registrar before registering the document. The stand taken by the Sub-Registrar in the impugned order cannot be said to be erroneous. Even as per the provisions of

the Registration Act, the parties to the registration must be present and their consent is required. However, considering the fact that, writ petitioner succeeded in the judicial proceedings and the sale consideration has already been settled in favour of the auction purchaser, the Sub-Registrar is empowered to conduct an inquiry by issuing notice to all the parties concerned and conduct an enquiry and thereafter take a decision on merits and in accordance with law and pass an orders without causing any undue delay.

7. With these observations the writ petition stands disposed of. There shall be no order as to Costs.

Sd/-

Assistant Registrar(CS ix)

//True Copy//

Sub Assistant Registrar

pkn

To

1. The Sub Registrar,
Perundhurai,
Erode District.

+1cc to M/s. S. Muthukrishnan, Advocate SR.No. 64361

+1cc to Mr.V.Adhivaradan , Advocate SR.No. 64773

+1 CC TO GOVERNMENT PLEADER SR.NO. 65048

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ASK(17/10/2018)

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