

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25-06-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.15401 of 2018

And

W.M.P.No.18290 of 2018

M/s.Abdul Khader
Partnership Firm,
Represented by its Partner Hitesh Kumar,
No.7, Sulaiman Zakaria Avenue,
Egmore,
Chennai-600 008.

.. Petitioner

Versus

1.Inspector General of Registration.

Santhome High Road,
Santhome,
Chennai.

2.The District Registrar,

Central Madras,
No.268, Bharathi Salai,
Express Estate,
Royapettah,
Chennai-600 014.

3.The Sub Registrar (Triplicane),

No.268, Bharathi Salai,
Express Estate,
Royapettah,
Chennai-600 014.

.. Respondents

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PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the third respondent to register the Memorandum of Deposit of Title Deeds, the Temporary Document bearing No.TP/16095147/2018 pending with the third respondent.

For Petitioner : Mr.K.Rajasekaran
For Respondents : Mr.T.M.Pappiah,
Special Government Pleader.

ORDER

The relief sought for in this writ petition is for a direction to direct the third respondent to register the Memorandum of Deposit of Title Deeds, the Temporary Document bearing No.TP/16095147/2018 pending with the third respondent.

2. The writ petitioner claims that he is the owner of the property of 686.75/46482 undivided share out of total land of 9 grounds and 106 sq. ft., comprised in old Survey No.26; R.S.No.323/3, Block No.11 of Triplicane Division together with Shop No.4, built up area of 2500 sq. ft., in ground and mezzanine floor in a building known as 'Aarthi Chamber', D.No.189, Mount Road, Chennai-600 002, in addition to 411.51/46428th undivided share out of total extent of land measuring 9 grounds and 106 sq. ft., comprised in old Survey No.26; R.S.No.323/3, Block No.11 of Triplicane Division together with shop No.17, constructed thereon measuring an extent of 1000 sq. ft.

3. The writ petitioner had purchased the said property in an open public auction held under Section 69-A of the Transfer of Property Act conducted by the auctioneers and the writ petitioner was the successful bidder and the Sale Deed was executed and registered as Document No.1346/2017 by the mortgagee, namely Mrs.Madhuri Gulecha, dated 11.10.2017. The said property was mortgaged to Mrs.Madhuri Gulecha by Mrs.Meeta Lalchand and the said Mortgage Deed was registered as Document No.3/2011 dated 3.1.2011. This agreement provided for sale without Court intervention under Section 69-A of the Transfer of Property Act.

4. The grievance of the writ petitioner is that the third respondent is refusing to register the Memorandum of Deposit of Title Deeds drawn by the writ petitioner, who is the absolute owner of the property by virtue of the Sale Deed dated 11.10.2017 registered as Document No.1346/2017. The reason stated by the third respondent was that there was an attachment pending before the Court.

5. However, the learned counsel, appearing on behalf of the writ petitioner, contended that the third respondent ought to have followed the rules and the provisions of the Registration Act in registering the document or refused to register the same, which was presented by the writ petitioner before the third

respondent. It is further urged that the Code of Civil Procedure, more-specifically to Order 38, Rule 10 on Court Attachment, states that the same will not affect the rights of persons, who are not parties to the suit and the attachment is not a bar of the decree holder, seeking the sale of the property under attachment. Thus, in spite of the attachment, the third respondent-Sub-Registrar is empowered to register the documents presented before him.

6. It is cited by the learned counsel for the writ petitioner that the Hon'ble Madurai Bench of Madras High Court in M.Chitra vs. Sub-Registrar, Dindigul District [WP (MD) No.14388 of 2014 decided on 1.9.2014], on identical circumstance, where Memorandum of Deposit of Title Deeds were presented but refused to be registered on the ground of an order of attachment of Civil Court and it was held that merely because an order was passed by a Civil Court effecting attachment cannot be a bar of entertaining a document for registration. There was also reference made to Section 71 of Registration Act, which provides reasons for refusal to register the document presented before the Registrar.

7. This Court in Rainbow Foundations Limited vs. State Bank of India and Sub-Registrar [W.P.No.11989 of 2016 decided on 12.4.2016] had relied on the proposition of M.Chitra and held that Sub-Registrar cannot deny registration unless there is an interim order from a competent Court interdicting him from registering the document and the Registrar can deny registration only on the grounds under Rule 55.

8. The Hon'ble Supreme Court in Balakrishnan Gupta and others vs. Swadeshi Poly Techs Ltd [1985 (2) SCC 167], held that the sale of subject property pending an order of attachment is only void as against the claims enforceable under the order of said attachment and not in respect of other claims and, in short, an order of attachment cannot be a bar for registering a document. This proposition was followed by the Hon'ble Madurai Bench of Madras High Court in K.D.P. Properties Pvt. Ltd vs. Sub Registrar and another [WP (MD) No.2635 of 2012 decided on 13.3.2013].

9. The judgment rendered by the Madurai Bench of Madras High Court in M.Chitra vs. Sub-Registrar, Dindigul District [W.P.(MD) No.14388 of 2014 decided on 1.9.2014], which has been enclosed in page No.23 of the typed set of papers filed along with the writ petition. The operative portion of the said judgment is extracted hereunder:-

"4. Section 71 of the Registration Act, 1908 deals with reasons for refusal to register which has to be recorded. In terms of Sub-Section (1) of Section 71, every Sub

Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub district, shall make an order of refusal and record his reasons for such order in his book No.2, and endorse the words 'registration refused' on the document, and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded. In terms of Sub-Section (2), no registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

5. In such circumstances, merely because there is an order of attachment passed by a Civil Court, the same cannot be a ground to refuse to register the Memorandum of Deposit of Title Deeds. If any deposit of title deeds is created in respect of the said property pursuant to the right acquired by the petitioner, vide settlement deed, dated 04.07.2011, it is always subject to further orders to be passed by the Civil Court. The petitioner's case is that she acquired title by way of settlement deed dated 04.07.2011, much prior to the order of attachment. Further, the learned counsel appearing for the petitioner placed reliance on Order 38, Rule 10 C.P.C. stating that attachment before Judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree. The lending bank namely, Canara Bank, Vadamadurai if satisfies with the title of the petitioner over the property, can request the Registrar to register the document. In such circumstances, merely because an order has been passed by the Civil Court effecting attachment, cannot be a bar for entertaining a document for registration. Hence, the reasons assigned by the respondent refusing to register, vide his memo, dated 25.07.2014, is not in accordance with law beyond the scope of Section 71 of the Act.

6. For the above reasons, the writ petition is allowed and the respondent is directed to accept the Memorandum of Deposit of Title Deeds dated 24.07.2014 and register the same within a period of four weeks from the date of receipt of a copy of this order. It is made clear that mere registration of the Memorandum of Deposit of Title Deeds will not in any manner affect any order of attachment, which was already effected and placed in the Encumbrance Certificate. No costs."

10. In view of the order passed by the Madurai Bench of Madras High Court, cited supra, the present writ petition also deserves to be considered. Accordingly, the writ petition stands allowed and the third respondent is directed to accept the Memorandum of Deposit of Title Deeds dated 18.5.2018 submitted in TP/16095147/2018 and register the same, within a period of four weeks from the date of receipt of a copy of this order. It is made clear that mere registration of the Memorandum of Deposit of Title Deeds will not in any manner affect any order of attachment, which was already effected and placed in the Encumbrance Certificate. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

Svn
To

1. Inspector General of Registration.

Santhome High Road,
Santhome,
Chennai.

2. The District Registrar,
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3.The Sub Registrar (Triplicane),
No.268, Bharathi Salai,
Express Estate,
Royapettah,
Chennai-600 014.

+1cc to Mr.K.Rajasekaran, Advocate, S.R.No.40109

+1cc to the Government Pleader, S.R.No.40398

WP.No.15401 of 2018

GSP (29/06/2018)



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