

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

Writ Petition No.10647 of 2017

and

W.M.P.No.11585 of 2017

Sundaram BNP Paribas Home
Finance Limited,
Rep by its AGM Legal/
Authorized Signatory
N. Rajendran,
4th Floor, Sundaram Towers,
46, Whites Road,
Chennai – 600 014.

... Petitioner

vs.

The Sub-Registrar,
Neelankarai,
Sub Registrar Office,
1/71, 1st Floor,
Kajera Garden, 2nd Street,
East Coast Road, Neelankarai,
Chennai – 600 115.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent culminated in the Impugned Order Final Notice P19/2017 dated 13.03.2017 and quash the same and consequentially direct the respondent to complete the registration

process in respect of the Sale Deed dated 05.01.2017 presented for Registration by the petitioner and return the Registered Sale Deed to the petitioner.

For Petitioner : Mr.P.V.Balasubramaniam
for M/s.BFS Legal

For Respondent : Mr.P.P.Purushothaman,
Government Advocate

ORDER

The petitioner is aggrieved against the order of the respondent dated 13.03.2017, wherein and whereby, the petitioner was called upon to inform whether the attachment made on the subject matter of property by the Court was lifted, failing which, that the document presented for registration will be refused for registration.

2. The petitioner purchased some property by way of a sale deed dated 05.01.2017 from their vendors. The said sale deed was presented before the respondent for registration on 05.01.2017. Required stamp duty and registration charges were paid. However, the respondent, after receiving the sale deed for registration, only assigned a pending Document No.P19 of 2017 and called upon the petitioner, through the impugned communication, to inform as to whether the Court attachment made over the said properties was

raised.

3. It is contended by the petitioner that the respondent did not give any further details regarding the alleged attachment. It is the case of the petitioner that, before purchasing the property, they made necessary enquiries and obtained Encumbrance Certificate from the respondent, which did not reflect any encumbrance other than the entry of deposit of title deed in favour of the petitioner.

4. The learned counsel for the petitioner submitted that the respondent is not entitled to refuse to register the document on account of attachment made by Civil Court. In support of his contention, the learned counsel relied on the decision of this Court reported in **2016 (3) CTC 493 (S.Praveen Bohra vs. Joint-I Sub-Registrar)**.

5. The learned Government Pleader, based on instructions, submitted that the document is kept as pending document even as on today, since the petitioner did not produce any evidence showing raising of the attachment.

6. Heard Mr.P.V.Balasubramaniam, learned counsel appearing for the petitioner and Mr.P.P.Purushothaman, learned Government Pleader appearing for the respondent.

7. The point for consideration in this writ petition is whether the respondent is entitled to refuse registration of the sale deed on the ground that the subject matter properties of the sale deed are under Court attachment. The very same issue was considered by this Court in ***W.P.No.36079 of 2015*** reported in ***2016 (3) CTC 493 (S.Praveen Bohra vs. Joint-I Sub-Registrar)*** and the learned Judge found that the order of attachment cannot be a bar to register the document. In order to arrive at such conclusion, the learned Judge relied on several decisions of this Court as well as Apex Court. At paragraph Nos.6 to 9 of the said decision, the learned Judge has observed as follows:

6. It is relevant to refer to the unreported judgment of the Madurai Bench of Madras High Court in W.P.(MD) No. 2635 of 2012, dated 13.03.2013, in the case of K.D.P. Properties Private Limited v. The Sub-Registrar, relied on by the learned counsel for the petitioner, wherein, in paragraph No. 18, a reference

was made to the decision of the Hon'ble Apex Court reported in (1985) 2 SCC 167, **Balkrishan Gupta v. Swadeshi Polytex Limited**, and it was held as follows:

"18. In (1985) 2 SCC 167 (supra), the Hon'ble Supreme Court has held as under:

"30. The consequence of attachment of certain shares of a company held by a shareholder for purposes of sale in a proceeding under section 149 of the Land Revenue Act is more or less the same. The effect of an order of attachment is what Section 149 of the Land Revenue Act itself says. Such attachment is made according to the law in force for the time being for the attachment and sale of movable property under the decree of a civil court. Section 60 of the Code of Civil Procedure, 1908 says that except those items of property mentioned in its proviso, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities of money, debts, shares in a corporation and all other saleable property, moveable or immovable, belonging to a judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor, or by another person in trust for him or on his behalf, is liable for attachment and sale in execution of a decree against him. Section 64 of the Code of Civil Procedure, 1908, states that where an attachment of a property is made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment. What is forbidden under Section 64 of the Code

of Civil Procedure is a private transfer by the judgment-debtor of the property attached contrary to the attachment, that is, contrary to the claims of the decree holder under the decree for realisation for which the attachment is effected. A private transfer under Section 64 of the Code of Civil Procedure is not absolutely void, that is, not void as against all the world but void only as against the claim enforceable under the attachment. Until the property is actually sold the judgment debtor retains title in the property attached. Under Rule 76 of Order 21 of the Code of Civil Procedure, 1908, the shares in a corporation which are attached may be sold through a broker. In the alternative such shares may be sold in public auction under Rule 77 thereof. On such sale either under Rule 76 or under Rule 77, the purchaser acquires title. Until such sale is effected, all other rights of the judgment debtor remain unaffected even if the shares may have been seized by the officer of the court under Rule 43 of Order 21 of the Code of Civil Procedure, 1908 for the purpose of effecting the attachment, or through a Receiver or through an order in terms of Rule 46 of Order 21 of the Code of Civil Procedure may have been served on the judgment debtor or on the company concerned".

19. The dictum laid down in the above judgment (1985) 2 SCC 167 (supra), gives a fitting answer to the issue raised in this writ petition. So far as the order of attachment passed by the DRT is concerned, the transfer is not void generally but it is void only as against the claims enforceable under the said attachment. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale. However, if the 2nd

respondent bank exercises its right as against the property, the petitioner cannot raise any objection because the sale of the vendor in favour of the petitioner is void in respect of the order of attachment obtained by the 2nd respondent bank. So, even if the property is sold in favour of the petitioner, the 2nd respondent bank can always exercise its right as against the said property.

20. In view of the above finding, I am of the opinion that the sale of the subject property pending the order of attachment is void only as against the claims enforceable under the order of said attachment and not in respect of other claims. Therefore, the sale of the property, which is under attachment, cannot be said as illegal.

In the light of what is stated above, the writ petition is allowed and the 1st respondent-Sub Registrar, Kochiada, Madurai, is directed to release the registered document in favour of the petitioner within a period of one week from the date of receipt of a copy of this order. No costs."

7. It is also worthwhile to refer to the unreported judgment of Madurai Bench of Madras High Court in W.P.(MD) No. 14388 of 2014, dated 01.09.2014, in the case of M. Chitra v. The Sub-Registrar, relied on by the learned counsel for the petitioner, wherein, in paragraph No. 5, it was held as follows:—

"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."

8. Thus, it is crystal clear that it is well settled principle of law that the order of attachment cannot be a bar to register the document. Therefore, I am of the view that there is no need for this petitioner to file an

appeal. I am of the opinion that the sale of the subject property, pending the order of attachment is void only as against the claims enforceable under the order of said attachment and not in respect of other claims. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale.

9. In the light of the decisions cited supra, the Writ petition is allowed and the Respondent viz., Joint-I Sub-Registrar, Coimbatore, is directed to register the document and release the registered document in favour of the petitioner, within a period of two weeks from the date of receipt of a copy of this Order. Consequently, connected Miscellaneous Petition is closed. No costs.

8. The learned Government Advocate is not in a position to place any contra decision and on the other hand, it is admitted by both sides that the said order of the learned Judge has become final and not challenged further.

9. Considering the above facts and circumstances and by following the order of the learned Judge reported in **2016 (3) CTC 493 (S.Praveen Bohra vs. Joint-I Sub-Registrar)** made under similar facts and circumstances, this Writ Petition is allowed and the respondent is directed to register the document presented by the petitioner (Pending Document No.P19 of 2017), within a period of

two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

13.12.2018

Speaking/Non-speaking order

Index: Yes/No

gsi/vsi

Note: Issue order copy on 17.12.2018

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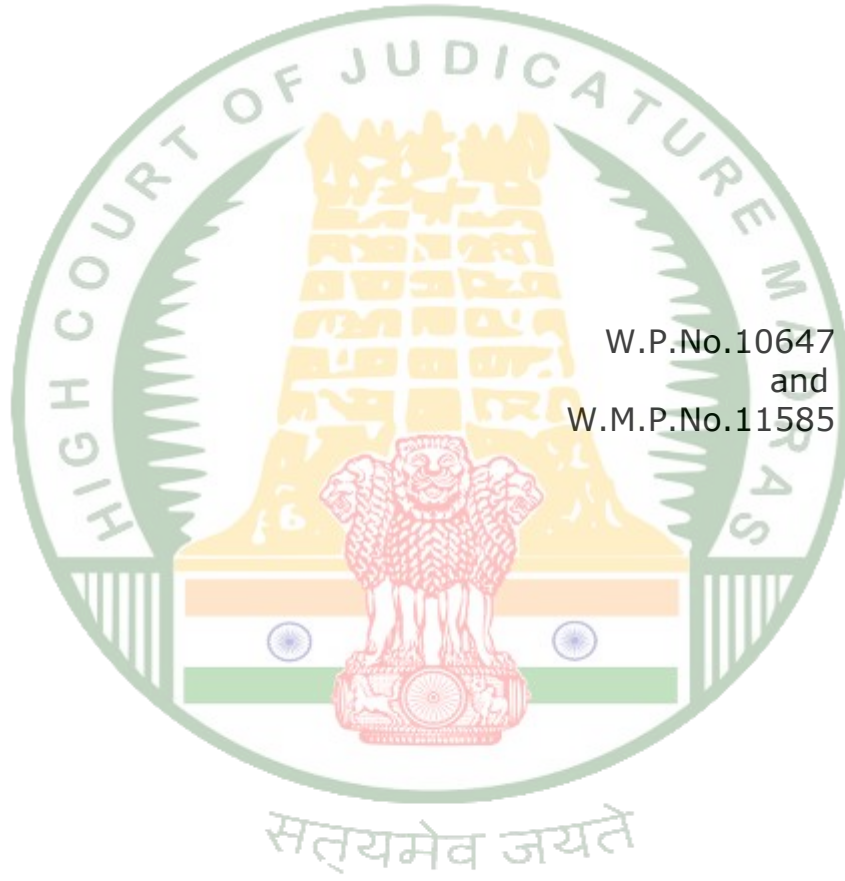
The Sub-Registrar,
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Chennai – 600 115.



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K.RAVICHANDRABAABU,J.

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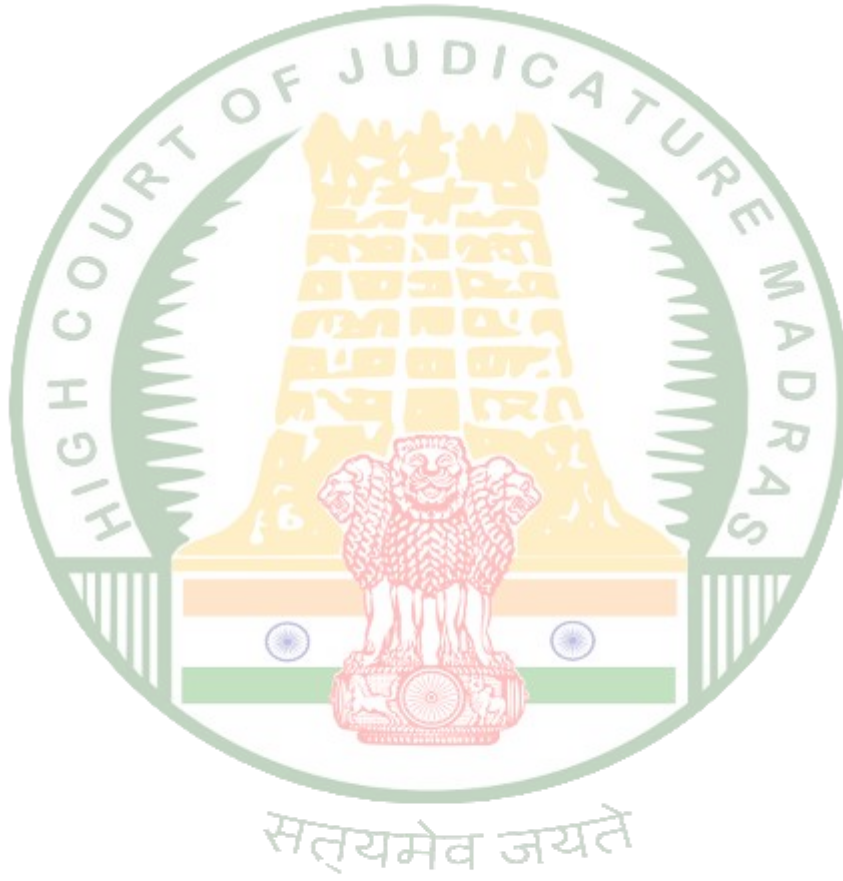


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