

HONOURABLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION NO: 1 7 3 5 6 OF 2012

ORDER :

This writ petition is filed invoking the inherent jurisdiction of this Court under Article 226 of the Constitution of India to issue a writ of mandamus to declare the action of the respondent-bank in not returning the original sale deed No. 214/1980, dated 06/10/1980, registered in the office of the Sub-Registrar, Chikkadpally, Hyderabad to the petitioner even though O.A.No. 18 of 2003 filed by the respondent-bank before the Debt Recovery Tribunal, Hyderabad was dismissed on 04/4/2006 and there is no charge or lien subsisting over the subject-property as illegal, unauthorised, arbitrary and in violating the fundamental rights guaranteed under Article 14, 19, 21 and 300-A of the Constitution of India and to pass such other suitable orders as this Court may deem fit and proper in the circumstances of the case.

2. Heard Sri V.V. Ramana, learned counsel for the petitioner and Sri A. Krishnam Raju, learned Standing Counsel for the respondent-Indian Overseas Bank.

3. The grievance of the petitioner is that the respondent-bank is not returning the original title deed in favour of the petitioner, which is said to be lying with them by way of deposit

of title deeds by virtue of mortgage and hence the petitioner prayed to declare the action of the respondent-bank is illegal and arbitrary.

4. Sri V.V. Ramana, learned counsel for the petitioner has drawn the attention of this Court stating that there was no occasion for the petitioner to deposit title deeds with the bank and only on some impersonation. It appears that his father might have deposited. In the present scenario when once the petitioner complies with the obligation of the bank by clearing the loan account, which is the subject matter of mortgage, the petitioner is entitled for obtaining the original title deed.

5. Sri A. Krishnam Raju, learned standing counsel appearing for the respondent-bank categorically submits that on the weightage of additional counter affidavit filed on 27/12/2016 at para No.5 and also placed on record a photo copy of letter dated 12/12/2002 of Sri V. Rajagopal Reddi, addressed to the Chief Manager, Bharath, Overseas Bank Limited, Khairtabad, Hyderabad, which reads as under :

I herewith acknowledge receipt of the following original documents given by Senior Manager, Sri A.K. Gautam, pertaining to Sri Saibaba Enterprises on 11/12/2002.

1. Guarantee for cash credits dt.20-12-2000
2. Agreement of term loan and hypothecation dt.20-12-2000.
3. Demand Promissory note dt. 20/12/2000.
4. Demand Promissory note dt. 2012-2000,
5. Demand Promissory note dt. 13/12/2000.
6. Demand Promissory note dt. 13/12/2000.

7. *Agreement for medium term loan (hypothecation of 2 pick up vans executed by defendant No.1).*

8. *Sale deed No. 214/1980.*

Thanking you.

Yours faithfully,
Sd/- (V. RAJAGOPAL REDDY).

In Para No.5 of the additional counter-affidavit filed by the respondent-bank, it is stated that while discussing with the counsel appeared for the bank before DRT that he did not intimate about the dismissal of I.A.No. 1834 of 2012 and after he met personally, he requested him to handover the record to enable the Bank to make alternative arrangement to continue the proceedings by filing appropriate application and also to return the original documents for which he replied that the documents were filed in the Debt Recovery Tribunal [D.R.T]. As an abundant caution, he verified with the office of the Debt Recovery Tribunal, Hyderabad and came to know that original documents listed in the O.A. would be received only at the stage of recording of evidence and they have only xerox copies of the documents in a book-form and as the O.A. was dismissed at the stage of issuing summons, there is no possibility of filing original documents with the Debt Recovery Tribunal, Hyderabad. When the O.A. was closed, later an application has been filed for restoration of the O.A. and the same is pending before the Debt Recovery Tribunal, Hyderabad. Thereafter, he requested the counsel to verify his records and provide the original documents and he represented to the Bank

that the original documents are not with him. He verified the records in their branch also though there is an acknowledgement dated 12/12/2002 from the counsel that he received the original documents at the time of filing the O.A. having received and on thorough verification, he could not find any documents with the branch.

6. Sri Kushal Kumar, Chief Manager, Indian Overseas Bank Limited, Lakdi-ka-pool, Hyderabad, is present before this Court and on verifying the records in the Bank submits through his counsel Sri A. Krishnam Raju, that the original documents were furnished to the standing counsel, Sri V.Rajagopal Reddi for placing them on record before the Debt Recovery Tribunal, Hyderabad. Later he came to know that O.A. in Debt Recovery Tribunal is closed and the originals were not found in the Debt Recovery Tribunal record and they were also not available with the Bank. Sri Kushal Kumar, Chief Manager of Indian Overseas Bank submits that they presumed that the originals were with the counsel and the counsel also informed them that the records in his office are misplaced and are not found since then.

7. In the light of the above facts and circumstances, this Court has no option except to direct the respondent-bank to make available to the petitioner to his satisfaction the certified copies and the certificate of receipt and also misplacing of the original documents and also giving paper publication in this regard. It is made clear that the said certificates from the bank will be issued

once the petitioner settles the account with the bank. In so far as the issue of misplacing the original documents of the petitioner is concerned, it is needless to observe that the petitioner is at liberty to take steps available under law.

8. The writ petition is disposed of. No costs.

9. As a sequel, miscellaneous petitions, if any pending in this writ petition shall stand closed.



JUSTICE T. AMARNATH GOUD.

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[R E S U L T : D I S P O S E D O F]



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