

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.1094 of 2019

M/s.Pegasus Assets Reconstruction Private Ltd.,
Acting in its capacity as Trustee
of Pegasus Group-Twenty Seven Trust-1,
No.55-56, 5th Floor, Free Press House,
Nariman Point, Mumbai - 400 021.
Rep. by its Assistant Vice President
S.Sai Venkatesan
Local office at No.23, New No.13,
McNichols Road, Chetpet, Chennai - 600 031. Petitioner

Vs

1. The Inspector of General Registration,
Government of Tamil Nadu,
Santhome High Road,
Chennai - 600 004.
2. The Sub-Registrar,
Mylapore, Chennai - 600 004. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to return the Assignment Agreement dated 28.02.2007 taken on file in Doc.P.No.59/2007 duly registered, to the petitioner within a time frame to be specified by this Court.

For Petitioner : Mr.Elayaraj Kumar
for M/s.Ramalingam and Associates.

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

O R D E R

The petitioner seeks for a Mandamus to direct the 2nd respondent to return the assignment agreement dated 28.02.2007 taken on file in Document No.P59/2007 duly registered to the petitioner.

2. The case of the petitioner is as follows:

The petitioner Company had acquired debt due in the NPA account of another Company, viz., M/s. Ram Super Leather Ltd., from State Bank of Mauritius Ltd. It is stated that the petitioner had acquired the debts by way of assignment of debt along with right and title in the financial documents. The said assignment of debt was carried out by entering into an assignment agreement dated 28.02.2010. On execution of such assignment agreement, the petitioner had paid the stamp duty of Rs.1 lakh and also presented the said document for registration before the 2nd respondent on 06.07.2007. The 2nd respondent, on receipt of the said document, collected the registration fee of Rs.20,000/- and assigned Pending No.P59/2007. The registration process was completed on 06.07.2007 and the petitioner paid the required registration fee of Rs.20,000/- as well. However, the 2nd respondent, without registering the document is keeping the same pending only on the reason that there are some subsisting attachments of the properties referred to in the assignment agreement. Hence, the present writ petition is filed with the relief as stated supra.

3. A counter affidavit is filed by the 2nd respondent wherein it is stated as follows:

The assignment agreement was made in respect of the property situated in Kuniyamuthur Village in addition to the property lying within the jurisdiction of the 2nd respondent. Hence, the Joint Sub Registrar-II, Coimbatore, was requested to inform whether there is any impediment in registering the assignment deed comprising the properties of Kuniyamuthur Village mentioned therein. The Joint Sub-Registrar-II, Coimbatore, informed that two attachments dated 10.09.2004 and 29.12.2004 made by the Regional Provident Fund Commissioner, Coimbatore against Kuniyamuthur Village properties, are subsisting. As the subsisting attachments are considered as impediment for registering the assignment deed, the document is kept pending for satisfaction or raising of attachments.

4. Learned counsel for the petitioner submitted that the 2nd respondent is not justified in refusing to register the document and release the same to the petitioner only on the reason that there are subsisting attachments against the properties referred to in the said document. In support of his contention the learned counsel relied on a recent decision of this Court made in W.P.No.10647/2017 dated 13.12.2018 made in Sundaram BNP Paribas Home Finance Limited vs. The Sub-Registrar, Neelankarai.

5. On the other hand, the learned Government Advocate appearing for the respondents reiterated the contentions raised in the counter affidavit.

6. Heard both sides.

7. The only question arises in this case for consideration is as to whether the 2nd respondent is justified in refusing to register the assignment deed on the ground that some of the subject matter properties of the assignment deed are under attachments as stated supra.

8. The above issue involved in this case is no more res integra in view of the fact that the very same issue was already considered by this Court and decided against the registering authority in a decision made in W.P.No.10647/2007 dated 13.10.2018. In fact, this Court, while passing the said order, followed the order passed in W.P.(MD).No.2632/2012 dated 13.03.2013, which in turn, followed the decision of the Apex Court reported in 1985 (2) SCC 167 (Balkrishan Gupta v. Swadeshi Polytex Limited). Paragraph Nos. 7 and 8 of the said order reads as follows:

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, Kochiadai, 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. Since the issue involved in this case is squarely covered by the above decision of this Court in favour of the petitioner, this Writ Petition is allowed and the 2nd respondent is directed to register the assignment agreement dated 28.02.2007 (Pending document No.P59/2007), as it is admitted by the 2nd respondent in the counter affidavit that there is no issue as regards levy of stamp duty or registration fee, as the petitioner has duly paid the same. The 2nd respondent shall comply with the order passed in this writ petition within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (Insp.Cell)

//True Copy//

vsi

Sub Assistant Registrar

To

1. The Inspector of General Registration,
Government of Tamil Nadu,
Santhome High Road,
Chennai - 600 004.

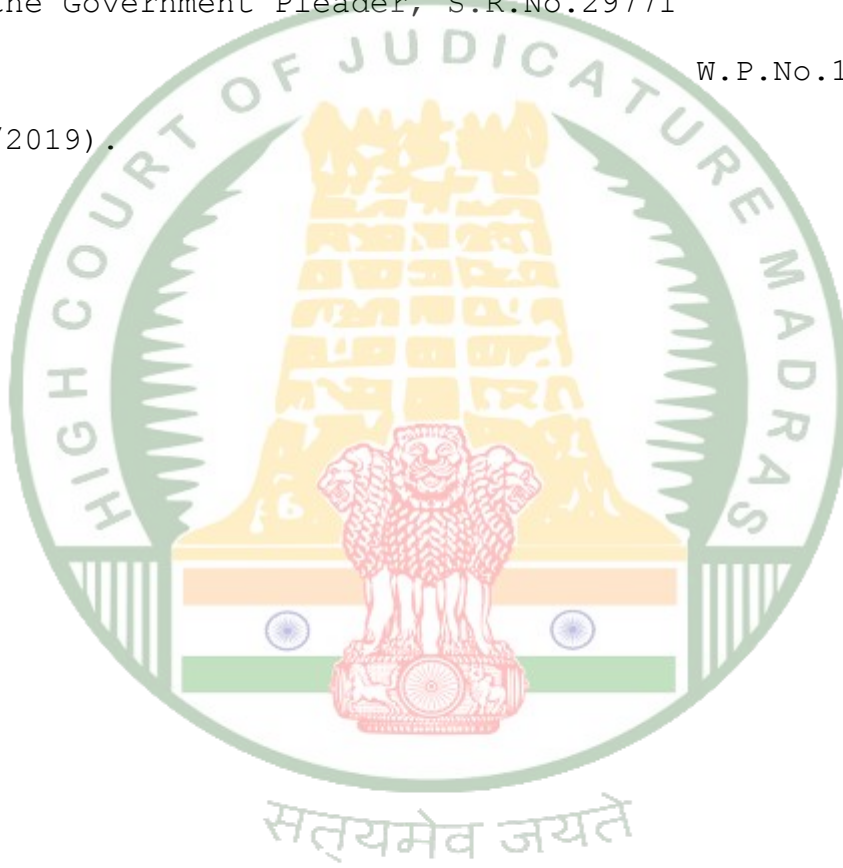
2. The Sub-Registrar,
Mylapore, Chennai - 600 004.

+2 ccs to M/s.Ramalingam and Associates, Advocate, S.R.No.28872

+1 cc to the Government Pleader, S.R.No.29771

W.P.No.1094 of 2019

SKV(CO)
SSM(30/04/2019).



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