IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.14540 of 2004
and
W.M.P.Nos.2136 of 2006 & 17225 of 2004

D.Sampoorani ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Arisipalayam Assessment Circle,
Salem - 4. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, writ of Certiorarified Mandamus, calling for the records of the case on the file of the Respondent in N.Ka.2763/2001. A3 dated 11.02.2004 issued under Tamil Nadu Revenue Recovery Act and quash the same and injunct the respondent restraining him from proceedings against the petitioner, as regards the Sales Tax arrears of Lakshmi Consultancy and Fabrications, Narasotipatti, Salem.

For Petitioner : Mr.B.Sivaraman for
M/s.R.V.Chitra & Associates

For Respondent : Mr.V.Haribabu
Additional Government Pleader (T)

O R D E R

The petitioner's property was offered as a security for obtaining sales tax registration for her husband under the TNGST Act, 1959 and CST Act, 1956 in the year 1990. The petitioner had allegedly offered the property as a security at the time of grant of the registration as the petitioner's husband was required under the provisions of the TNGST Act, 1959 and CST Act, 1956 to offer security while obtaining registration.

2.According to the respondent, the original of the title deed was returned to the petitioner's husband and it was stated by the respondent that they had obtained an endorsement on the photo copy of the title deed of the property that said property was offered as security for the aforesaid registration.

3.The petitioner's husband however failed to pay tax and fell in arrears. Therefore, the revenue recovery proceedings were initiated to recover the arrears of tax due vide impugned order to sell the property of the petitioner. It is the case of the petitioner, the petitioner cannot be made liable for the arrears of tax of her husband as no valid charge was created in favour of the respondent as the original title deed is still with her. It is further submitted that the petitioner cannot be held liable for arrears of tax of her husband.

4.The learned counsel for the petitioner relied on the following decisions to state that the liability cannot be fastened as she has not defaulter:-

i. T.Ponurajathi vs The Deputy Commercial Tax officer, Bodinayakanur, 1992 (1) M.T.C.R 558.
ii. K.Nagammal vs The Joint Commerical Tax Officer, Karur, (1973) 31 STC 607 (Mad).
iii. K.K.Kaliyannan Arumugam & Vijayalakshmi Arumugam vs The Commercial Tax Officer and Ors., passed by this Court in W.P.Nos.23789 & 23790 of 2005, dated 07.09.2016.
iv. K.M.Mohd. Abdul Khader Firm vs Deputy Commercial Tax Officer, Kodaikanal and Another, (1989) 74 STC 33 (Mad).
v. M.Susila vs The Commercial Tax Officer, Annathanapttai Circle, Salem and another, passed by this Court in W.P.No.21789 of 2004, dated 14.07.2017.
vi. P.Sellamamal vs The Commercial Tax Office, Perundurai, Erode District and another, passed by this Court in W.P.No.17136 of 2003, dated 27.07.2017.
vii. S.Usha vs The Commercial Tax Officer, Chithode Circle, Erode, passed by this Court in W.P.No.2486 of 2012, dated 12.02.2018.

5.The learned counsel for the petitioner further drew my attention to the provision of the Revenue Recovery Act, 1890 and the provisions of TNGST Rules, 1959. Particular reference was made to Rule 24(15-A) which refer with the Transfer of Property Act, 1882. He also submits that while granting registration, the authorities are required to accept an equitable mortgage in terms Rule 24(15-A) of the TNGST Rules, 1959, which reads as follows:-

> R.24(15-A) The security shall be in any of the following forms, namely:-

(i) Immovable property

(ii) Deposit in Government Treasury by cash;

(iii) Government promissory notes duly pledged in the name of the registering authority;

(iv) Post office Savings Bank Deposits, duly pledged in the name of the registering authority

(v) Deposits made with the State Bank of India or any Subsidiary Bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act XXXVIII of 1959) or any corresponding new Bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act V of 1970) or any non-nationalised Scheduled Bank operating in the State of Tamil Nadu or the Tamil Nadu State Co-operative Banks and Central Co-operative Banks approved by the Registrar of Co-operative Societies for this purpose.

(vi) Loans, bonds other than prize bonds or debenture issued by Quasi-Government organisations or other institutions repayment of which are guaranteed by the Government and National Defence Certificates duly pledged in the name of the registering authority.

Explanation I- Where the security is furnished in the form of immovable property, the person furnishing it may in any town to which sub-section (f) of Section 58 of the Transfer of the Property Act 1882, (Central Act IV of 1882) is applicable. Mortgage such property to the Government by deposit of title deeds. In other cases, the security shall be by means of registered mortgage of the immovable property. The security bond shall be in Form XIX-B and shall be filed in duplicate, the original of which should bear appropriate adhesive non-judicial stamps or Court fee stamps.

Explanation II- Where security is furnished in the form of a deposit in any of the banks specified in item (v) above, the deposit shall be made in the name of "The registering authority/Account....... dealer (proprietor/Firm/Company, etc.)" and the dealer shall, at the time of making the deposit give an application/letter to the bank to the effect that the deposit in question has been offered to the registering authority as security for due performance of his obligations and the Tamil Nadu General Sales Act, 1959(Tamil Nadu Act I of 1959) and that the deposit might be held, renewed or released according to the instructions of the registering authority.

6.The learned counsel for the petitioner submits that since there is no deposit of title original deed as was contemplated under Explanation I to Rule 24(15-A), the respondent is not entitled to invoke the provisions of Revenue Recovery Act, 1980 against the petitioner.

7.Per contra, the learned counsel for the respondent submits that the respondent is entitled to enforce the revenue recovery proceedings against the petitioner. In any event, the petitioner has an alternate remedy under the provisions of the Revenue Recovery Act, 1890.

8.The learned Additional Government Pleader (T) submits that the property was offered as security while granting registration under the TNGST and CST Act .

9.It is submitted that for security reasons the original was returned after collecting photo copies with an endorsement. Therefore, it is not open to the petitioner to contend that she cannot be held liable to pay for the arrears of tax under the Revenue Recovery Act, 1890 of her husband.

10.The learned Additional Government Pleader (T) appearing for the respondent relies on the following decisions:-

i. V.K.R.S.T.Narayanan Chettiar (dead) and Ors. Vs. The Right 'Hon'ble the Secretary of State for India in Council and Ors., 1940 SCC OnLine Mad 67.

ii. Nav Rattanmal and Ors. Vs. The State of Rajasthan, 1961 AIR SC 1704.

iii. Chengondi Venkatarama Das Vs. Bonam Latchanna and Ors., 1965 SCC OnLine AP 215.

iv. Balkishen Goenka Vs. Special Assistant Commercial Tax Officer for Sales Tax Collection, 1971 SCC OnLine Mad 430.

v. Government of India Vs. Citedal Fine Pharmaceuticals Madras & Ors, Etc., 1989 AIR SC 1771.

vi. Ganji Venkateswara Rao Vs. Deputy Commercial

Tax Officer No.I, Vijayawada and Ors., 2001 SCC OnLine AP 466.

vii. Mrs.Meenakshi J. Ganesh kumar Vs. Deputy Commercial Tax Officer, Srivilliputhur and Another, 2010 SCC OnLine Mad 6460.

11.At the time of admission of this case, this court has passed an order in W.M.P.No.17225 of 2004, dated 25.05.2004. The order in W.M.P.No.17225 of 2006 reads as under:-

> Interim stay on condition that the petitioner deposits rupees Twenty lakhs within a period of six weeks from the date of receipt of copy of this order failing which the writ petition itself would stand dismissed without any further reference to this Court. It is open to the petitioner to prove that the property belongs to the petitioner in appropriate Civil Court.

12.Against the said order, the petitioner preferred W.A.No.481 of 2006 before the First Bench of this Court. The said W.A was disposed with the following observations:-

> The interim order of the learned Single Judge is confirmed, except the condition directing the petitioner/appellant to deposit Rs.20,00,000/- on the undertaking given by her through her counsel that she will not transfer, alienate, encumber or part with possession of the property in question pending hearing and final disposal of the writ petition. All the contentions of the parties, on merits, are left open to be decided in the writ petition.

13.The learned Additional Government Pleader (T) therefore submits that the only remedy available to the petitioner is to file a suit to declare that there was no mortgage as security for the purpose of registration under the provisions of the TNGST Act, 1959 and CST Act, 1956.

14.I have considered the arguments of the learned counsel for the petitioner and the respondent. I have also perused the documents produced in support of the present writ petition.

15.Rule 24(15-A) of the TNGST Rules, 1959, contemplated security in the form of immovable property for grant of registration. Under Explanation I to the above Rule, security may be furnished in the form of immovable property in terms of Section 58(f) of the Transfer of the Property Act, 1882 by deposit of title deeds.

16.As per Section 58(f) of the Transfer of the Property Act, 1882, the transaction of mortgage by deposit of title deeds arises where a person in any of the presidency towns, namely Culcutta, Bombay and Madras and in any other towns in which the concerned State Government may, by notification in the Official Gazette, specify in this behalf to the borrower to deliver to a creditor or his agent documents of title to immoveable property with an intent to create a security thereon.

17.Though normally mortgage by deposit of title deeds is created on the strength of deposit of original title deed, there is nothing in the Act which contemplates such creation only with the help of the original title deed. It can be on the strength of certified copy of the title deed. It is sufficient if there is an intention to create equitable of mortgage by deposit of title deed. There is no necessity to execute any documents.

18.There are instances where due loss of original documents, certified copies have been accepted for creation of a valid mortgage by deposit of title deed.

19.The Supreme Court of India in K.J Nathan Vs. S.V.Maruty Reddy and Ors., [1964] 6 SCR 727, held that the term “document of title” and “title deeds” denotes such a document or documents showing a prima facie or apparent title of the depositor or some interests therein.

20.The Court held as follow:

> "If the form of the documents of title that have been delivered to the creditor is such that from the deposit of such documents alone the Court would be entitled to conclude that the documents were deposited with the intention of creating a security for the repayment of the debt, prima facie a mortgage by deposit of title-deeds would be proved; although, of course, such an inference would not be irrebuttable, and would not be drawn if the weight of the evidence as a whole told against it."

21.The Court in the above case took the view that there is no presumption of law that the mere deposit of title-deeds constitutes a mortgage, for no such presumption has been laid down either in the Evidence Act or in the Transfer of property Act. But a court may presume under Section 114 of the Evidence Act that under certain circumstances a loan and a deposit of title-deeds constitute a mortgage as to the existence of one fact from the existence of some other fact or facts.

22.The above view also followed by this Court in C. Rajagopal vs. State Bank of Travaneore, Karur Branch and Ors. (1995) 1 MLJ 175 where it was held as:

> The issue that, therefore, arises in cases like the present is whether the term 'document' of title would only apply to a document by which the mortgagor derives title to the property to be mortgaged, or whether it would also apply to any document which provides some, if not conclusive, evidence that the mortgagor has title to the property. In our view, it is beyond doubt that the term lends itself to the interpretation that it includes the latter category of documents.

23.A Full Bench decision of the Rangoon High Court in Chidambaram Chettiar Vs. Aziz, AIR 1938 Rangoon 139, had reviewed the English and Indian authorities and pointed out that in order to create a valid mortgage, it is not necessary that the whole, or even the most material of the documents of title to the property should be deposited. The documents deposited should show a complete or good title in the depositors and it is sufficient if the deeds deposited bona fide relate to the property or are material evidence of title have been shown to have been deposited with the intention of creating security thereon.

24.The Lahore High Court in Jessis Moyle Stewart Vs. Bank of Upper India, AIR 1916 Lah. 39, held that "title include copies, where the originals are not forthcoming."

25.Surendra Mohan Rai Choudhury Vs. MohendraNath Banerjee, AIR 1932 Cal 589, is also an authority for the same proposition wherein a similar view was expressed by the Calcutta High Court. A Division Bench of the Calcutta High Court in a later decision made an observation that it is sufficient if the deeds deposited bona fide relating to the property are material evidence of title and are shown to have been deposited with the intention of creating a charge. A certified copy of redemption certificate produced was held that deposit of certified copy of redemption certificate taken along with the probate, clearly indicated an intention to create a security on the probate.

26.In Angu Pillai Vs. Kasi Viswanathan Chettiar, (1993) 1 MLJ 334, it was held that it is sufficient if the deeds deposited bona fide relate to the property or are material evidence of title or are shown to have been deposited with the intention of creating security thereon, to constitute an equitable mortgage by the appellant in favour of the Bank in respect of his right in the property which has been mortgaged to the Bank.

27.Thus, an equitable mortgage can be created by deposit of photocopy, certified copy of the original if there is an intention to create security in favour of the creditor. In the light of the above decisions of the courts, I am of the view that the decisions cited by the petitioner are distinguishable.

28.In this case, it is the contention of the respondent that they are in possession of the photo copies of the title deed of the subject property on which there was an endorsement by the petitioner and her husband at the time of grant of sales tax registration to that effect that it was offered as a security and the original was returned to the petitioner. If there was an endorsement on the photocopy of the title deed as has been submitted on behalf of the respondent by the learned Additional Government Pleader (Taxes), certainly the respondent is entitled to proceed against the property of the petitioner.

29.However, the learned Additional Government Pleader (Taxes) has stated that the photocopy of the title deed of the property of the petitioner on which there is an endorsement of the petitioner and her husband is not immediately traceable. The learned Additional Government Pleader (Taxes) submits that the said document will be searched before proceeding further with the Revenue Recovery proceedings.

30.The learned Additional Government Pleader (Taxes) submits that if an opportunity is given, they will trace out the same before proceeding further with the Revenue Recovery proceedings. I find this reasonable suggestion and therefore I am of the view that the impugned Revenue Recovery proceedings can be kept in abeyance for some time.

31.Under these circumstances, I am inclined to dispose this Writ Petition with a direction to the respondent to call upon the petitioner for a hearing after furnishing a photo copy of the title deed of the petitioner's property purportedly containing such endorsement of the petitioner and her husband. The respondent shall furnish a photo copy of the said document to the petitioner within a period of six months from the date of receipt of a copy of this order.

32.In case, the such endorsement is there, the respondent are permitted to proceed in accordance with law after considering the objection of the petitioner. Liberty is also given to the petitioner to invoke the provision of the Revenue

Recovery Act, 1890 to defend her rights over the property. The respondent shall pass orders within a period of twelve months from the date of a receipt of a copy of this order.

33.Accordingly, the present Writ Petition is disposed with the above directions. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

jas / jen

To

The Deputy Commercial Tax Officer,
Arisipalayam Assessment Circle,
Salem - 4.

+1cc to Mr.Lakshmi Sriram, Advocate, SR.No.105071.
+1cc to Government Pleader, SR.No.105448.

W.P.No.14540 of 2004
and
W.M.P.Nos.2136 of 2006 &
17225 of 2004

LN(CO)
CSR: 24.02.2020