

A.No.7299 of 2019
in C.S.No.49 of 2018

SENTHILKUMAR RAMAMOORTHY, J.

This application is filed seeking a direction to the Registry to communicate the order dated 27.03.2018 passed in O.A.No.85 of 2018, to the Sub-Registrar, Sriperumpudur, SH -57, Ramanujar Nagar, Tamil Nadu – 602 105, for entering the said order in Book No.1, in respect of the properties morefully described in the schedule of the Judge's summons in O.A.No.85 of 2018.

2. I heard the learned counsel for the applicant and the learned counsel for the respondents.

3. The learned counsel for the applicant submitted that by an earlier dated 27.03.2018 in O.A.No.85 of 2018, the respondents were restrained from dealing with or alienating the properties described in the schedule to the said application. He pointed out that the said order recorded that, if the existing mortgage on the property is cleared, the Court should be informed about the same and the property should not be encumbered without the leave of this Court. He further submitted that the said order of this Court was violated by the respondents by first redeeming the existing mortgage and, thereafter, creating a fresh mortgage on the same date in respect thereof.

4. In order to substantiate his submissions, the learned counsel for the applicant referred to the mortgage discharge receipt at page nos.2 and 3 of the typed set of papers dated 14.12.2019, which reflect the discharge of the mortgage. In addition, he referred to the mortgage deed dated 14.05.2019, which is at page nos.13 and 19 of the same typed set of papers, so as to emphasize that a fresh mortgage has been created and this mortgage deed covers Survey Nos.76/1 and 76/2 pertaining to Plot No.213 and Survey No.77/1 pertaining to Plot No.140.

5. In view of these developments, the learned counsel for the applicant submitted that the present application is liable to be allowed, so as to ensure that no further third party interest is created, which could have the effect of defeating the fruits of the decree that may be obtained by the applicant in the suit.

6. In response, the learned counsel for the respondents submitted that the earlier order dated 27.03.2018 in O.A.No.85 of 2018 was passed on the basis of an undertaking that was provided by the respondents and that this is evident from the order at page no.3 of the typed set of papers dated 26.09.2019, which records the undertaking of the respondents. He pointed out that the existence of the registered

mortgage over the properties described in the schedule of the Judge's summons was disclosed by the respondents and such disclosure is also reflected in the undertaking of the respondents.

7. With regard to the discharge and the recent re-mortgage, the learned counsel for the respondents submitted that the properties covered both by the earlier mortgage and by the re-mortgage are the same and this is clear if one compares page nos.3 with 17 and 18 of the typed set of papers dated 14.12.2019. He further submitted that no third party interest, other than the rights created in favour of the mortgagee, would be created by referring to paragraph nos.5 and 6 of the counter affidavit. He also submitted that the applicant does not have any right or interest in the properties described in the schedule of the Judge's summons and therefore, the present application should be rejected. In other words, it is his submission that allowing this application is tantamount to creating interest in the properties described in the schedule of the Judge's summons in favour of the applicant.

8. The submissions made by both the learned counsel were considered and the records were perused .

9. This application is no more than a consequential application to

O.A.No.85 of 2018. On 27.03.2018, in the said application, this Court passed the following order:

"That the respondents herein shall not deal with or alienate the suit property morefully set out in the schedule hereunder and if the mortgage is cleared they shall inform the Court about the same and shall not encumber the property without leave of this Court.

2. That the O.A.No.85 of 2018, A.No.892 of 2018 do stand closed."

10. From the aforesaid order, it is clear that the respondents were restrained from alienating the suit property as described in the schedule to the order. In addition, the Court took note of the fact that there was an existing mortgage and the respondent would inform the Court, if such mortgage is redeemed. It was also expressly recorded in the order that the respondents should not encumber the property without the leave of this Court.

11. From the mortgage discharge receipt dated 14.05.2019 and the new mortgage deed 14.05.2019, it is abundantly clear that the order of this Court has been breached by the respondents. Consequently, the applicant has *prima facie* established that unless the earlier order is communicated to the Sub-Registrar concerned, further third party interest may be created to the prejudice of the applicant.

12. The submission of the learned counsel for the respondents that the applicant does not have any right or interest over the

properties described in the schedule of the Judge's summons may be correct, but by virtue of the orders of this Court, the respondents were restrained from alienating or encumbering the properties described in the schedule of the Judge's summons and, therefore, a case is made out to communicate to the Sub-Registrar concerned, the order dated 27.03.2018 passed in O.A.No.85 of 2018, in the light of the recent developments by way of creating a new mortgage. Needless to say, it is an order restricting encumbrances or alienation and not an order creating an encumbrance.

Accordingly, this application is allowed by directing the Registry to communicate the order dated 27.03.2018 passed in O.A.No.85 of 2018 to the Sub-Registrar, Sriperumbudur, SH -57, Ramanujar Nagar, Tamil Nadu – 602 105, for entering the said order in Book No.1 in respect of the properties morefully described in the schedule of the Judge's summons in O.A.No.85 of 2018.

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NOTE: Issue copy of this order by 19.12.2019.

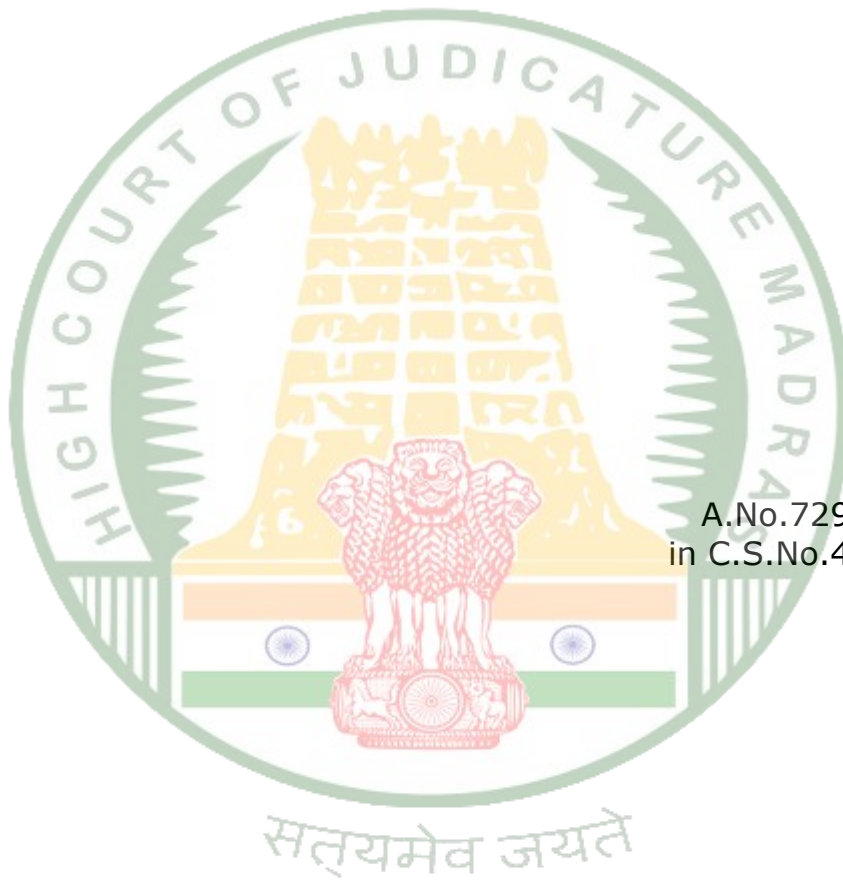
To

The Sub-Registrar,
Sriperumbudur,
SH -57, Ramanujar Nagar,
Tamil Nadu – 602 105.

<http://www.judis.nic.in>

SENTHILKUMAR RAMAMOORTHY, J.

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