IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.01.2019
CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.Nos.14588 and 14589 of 2017
and
W.M.P.Nos.15809 & 15810 of 2017

S.Sukumari ...Petitioner in both the W.Ps.

Vs

1. The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

2. The District Registrar,
The District Registrar Office
Chennai - 600 001.

3. The Sub Registrar,
Sowcarpet,
Chennai - 600 001. ...Respondents in both the W.Ps.

Prayer:-Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for records pertaining to Check Slip No.1/2017 and Slip No.2/2017 respectively dated 20.02.2017 and the further impugned proceeding Nos.1/2017 & 2/2017 respectively dated 7.4.2017 issued by the third respondent, the Sub-Registrar (District Registrar cadre), Sowcarpet and quash the same and consequently and directing the third respondent to register the settlement deed dated 06.02.2017 executed by the petitioner herein in favour of her mother Mrs.Bramaramba and her brother Mr.Sushil Kumar Bhaskaruni respectively, considering the sale certificate dated 27.08.2013 issued by this Court under Order 21 Rule 94 of CPC in favour of the petitioner as parent title deed, without insisting for encumbrance certificate and parent documents to prove the title.

For Petitioner : Mr.P.Thiagarajan in both WPs

For Respondents : Mr.P.P.Purushothman
Government Advocate for R1 to R3
in both WPs

COMMON ORDER

The petitioner is aggrieved against the action of the Registering Authority viz., the 3rd respondent in refusing to register the two settlement deeds executed by her in favour of her mother and brother in respect of half share each in the subject matter property.

2. The 3rd respondent/Registering Authority refused to register on the reason that the petitioner's name is not reflected in the Encumbrance Certificate and that the sale certificate produced by the Settlor/ petitioner herein has neither been engrossed on the required stamp duty nor paid to the instrument under Indian Stamp Act, 1899. In other words, the main objection raised by the Registering Authority is that the sale certificate issued by this Court in favour of the petitioner has not been registered.

3. It is seen that the petitioner purchased the subject matter property in Court auction and a sale certificate dated 27.8.2013 has been issued by this Court to that effect in respect of the subject matter property. The question as to whether such sale certificate is compulsorily registrable or not has already been considered by this Court in W.P.No.23618 of 2012 and W.P.No.25268 of 2012 dated 24.02.2014 reported in 2014 (4) MLJ 594 (D.B.Prakashchand Jain vs. R.Ramesh) by observing as follows:

> 10. The crux of the issue is as to whether the Sale Certificate issued by the Mumbai Debts Recovery Tribunal requires registration.
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> 11. In this connection, the decision relied on by the learned counsel for the petitioner reported in (2007) 5 SCC 745, (cited supra) is relevant to be quoted, since the said decision answers the above issue. At paragraph No. 12 of the said decision, the Hon'ble Supreme Court has observed as follows:
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> > "12….When a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction-purchaser derives title on confirmation of sale in

> his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. In this case, the sale certificate itself was registered, though such a sale certificate issued by a court or an officer authorised by the court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which require registration under sub-sections (b) and (c) of Section 17(1) of the said Act. We therefore hold that the High Court committed a serious error in holding that the sale certificate did not convey any right, title or interest to plaintiff's father for want of a registered deed of transfer."

12. From the above decision of the Apex Court, it is clear that the Sale Certificate issued by the Mumbai Debts Recovery Tribunal does not require registration and it is merely evidencing the title to the property in favour of the purchaser, who got such title in pursuant to the court auction.

13. A learned single Judge of this Court in a decision reported in (2010) 155 Company cases 549 (Mad), (cited supra), after following the above said decision of the Apex Court has held at paragraph 16 to 18 as follows:

> "In view of the above judgment and exemption granted under section 17(2), the copy of the document is only required to be filed in Book No. 1 under the special procedure under section 89 of the Act. If stamp duty is required even for filing of the copy of instrument under section 89 of the Act, the exemption given under section 17(2) of the Act would become meaningless. In that event, there is no necessity for the special procedure under section 89 of the Act and it would amount to violation of the Act. The Hon'ble Supreme Court in similar circumstances in Smt. Shanti Devi L. Singh v. Tax Recovery Officer reported

in (1990) 183 ITR 481; AIR 1991 SC 1880, after comparing "registration" under section 17 with "filing" under section 89 of the Act held that though the processes are different, the purchaser at a Court or revenue sale is under no disadvantage because of lack of registration and transfer of title is not vitiated by non-registration of certificate and directed the Registrar to file the copy of the sale certificate in Book No. 1.

The office of the Official Liquidator, High Court, Madras, wrote a letter dated March 15, 2007, to the respondent/Registrar enclosing a copy of the certificate of sale dated December 22, 2006, to be filed in Book No. 1 as per section 89 of the Act. Section 89 of the Act is very categorical that the Registering Officer has to file the copy of such certificate in Book No. 1 and it is the bounden duty of the officer to file the copy in his Book No. 1 or get it scanned.

When such is the position, the sale certificate would have come under Section 17"(2)(xii) of the Registration Act, 1908. As long as sections 17(2) and 89 are there in the Registration Act, the court can only go by the statute and quash the order which are ultra vires the Act. In view of the categorical pronouncement of the judgment of the Supreme Court and also the judgment of this Court and also in view of provisions given in the Registration Act, the court holds that court auction sale certificate sent to the Registration for filing in Book No. 1 would not attract stamp duty. The respondent has got no power and jurisdiction to issue the impugned order because of sections 17(2) (xii) and 89(2) of the Registration Act and cannot demand stamp duty. Hence the impugned order is liable to be set aside."

14. In my considered view, the above decisions relied on by the learned counsel for the petitioners are squarely applicable to the case on hand. Moreover, the sale certificate is only a parent

> document in so far as the documents which are sought to be registered before the third respondent. Admittedly, the said Sale Certificate was not sought to be registered by the petitioners. I wonder as to whether the respondents are entitled to insist upon the production of parent document in respect of the documents sought to be registered and impound the same for payment of deficit stamp duty, even assuming such parent documents require registration. In my considered view, the Registering Authorities are not entitled to go into the validity of the title to the property conveyed and sought to be registered. At any event, in this case, the sale certificate was issued by the Mumbai Debts Recovery Tribunal and consequent upon such purchase, the Settlement Deeds and Sale Deeds were executed by the purchaser of the property through the said Sale Certificate.
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> 15. It is held by the Apex Court in the above decision made in (2007) 5 SCC 745 (cited supra), that the Sale Certificate does not require registration. Consequently, the respondents are not entitled to seek for production of the said Sale Certificate for impounding the same for payment of deficit stamp duty. Accordingly, I am of the view that the impugned action in both the writ petitions are liable to be set aside and accordingly, they are set aside. Consequently, the writ petitions are allowed and the third respondent in both the writ petitions is directed to complete the registration of the documents presented for registration by the petitioners bearing P. Nos. 26 of 2011 to 37 of 2011 and P. Nos. 20 of 2011 to 37 of 2011 respectively, within a period of three weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petitions are closed.

4. The learned counsel for the petitioner strongly relied on the above said decision of this Court and contended that the issue involved in this case is squarely covered by the above said decision.

5. The learned Government Advocate for the respondents is not disputing the fact that the issue involved in this case is covered in the above said decision.

6. Considering the fact that the only reason stated by the Registering Authority for not registering the settlement deed cannot be sustained, in view of the order passed by this Court

in the above said case, I am of the view that the petitioner is also entitled to the same relief.

7. Accordingly, both the Writ Petitions are allowed and the impugned orders are set aside. Consequently, the 3rd respondent is directed to register the settlement deeds filed by the petitioner dated 06.02.2017, after collecting the other necessary fees, within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Inspector General of Registration,
   Santhome High Road, Chennai - 600 028.

2. The District Registrar,
   The District Registrar Officer
   Chennai - 600 001.

3. The Sub Registrar,
   Sowcarpet, Chennai - 600 001.

+2 cc's to Mr.P.Thiagarajan, Advocate Sr.No.1527,1528
+1 cc to The Government Pleader, Sr.No.1404

W.P.Nos.14588 and 14589 of 2017

CSL/01.02.2019