

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.08.2019
CORAM
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
W.P.No.17743 of 2017

K.Hajee Ummer Kizhakkumbrath

..Petitioner

Vs

- 1.The Inspector General of Registration,
Registration Department,
Government of Tamil Nadu,
Santhome, Chennai - 600 028.
- 2.The District Registrar,
Administration,
Kancheepuram District.
- 3.The Sub Registrar,
Sub-Registrar Office,
Thiruvalangadu.
- 4.The Managing Director,
Tiruttani Co-Operative Sugar Mills Ltd.,
Thiruvalangadu - 631 210.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a Writ of Certiorari Mandamus, to call for the records pertaining to the impugned order dated 02.09.2016 passed in Na.Ka.No.423/B1/2016 passed by the second respondent herein and quash the same and further directing the Sub Registrar, Thiruvalangadu to Register and Pending Documents P.No.399 of 2013, dated 03.06.2013 and P.No.18 of 2015, dated 17.04.2015 on the file of the Sub Registrar, Thiruvalangadu and release the registered Document in favour of the petitioner herein.

For Petitioner : Mr.C.Shankar

For Respondents : Mr.P.P.Purushothaman
Government Advocate for R1 to R3

Mr.L.P.Shanmugasundaram
Special Government Pleader for R4

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records pursuant to the impugned order dated 02.09.2016 passed by the second respondent in Na.Ka.No.423/B1/2016 and quash the same and consequently, direct the Sub Registrar, Thiruvallangadu to Register the Pending Documents in P.Nos.399 of 2013 and 18 of 2015, dated 03.06.2013 and 17.04.2015 and release the same in favour of the petitioner.

2. The petitioner would state that the lands measuring an extent of 2.72 Acres comprised in S.Nos.181/6A, 181/8, 181/10, 181/18A, 209/3 and 181/16, situated at Veeraragahavapuram Village were originally owned by one S.Shanmugam, by virtue of registered sale deeds in the year 1991, 1993 and 1996. The said S.Shanmugam, mortgaged the lands in favour of one Govindan Kutty on 06.01.2006, vide registered mortgage deed No.239 of 2006. Thereafter, the mortgagor along with his wife Ms.Suseela, jointly sold the property in favour of one P.Prithiviraj, through a registered sale deed dated 22.12.2006.

3. The petitioner would further state that the Registrar of Co-operative Society had passed an order of attachment against the said Shanmugam, in pursuance of the departmental action taken against him and the same was communicated to the Sub Registrar, Thiruvallangadu on 22.03.2007. The purchaser/ P.Prithiviraj had reconveyed the extent of 2.19 acres in favour of S.Shanmugam, through a registered sale deed dated 07.05.2008 and subsequently, S.Shanmugam conveyed the property in favour of his mortgagee Govindan Kutty on 03.06.2008. Challenging the said sale, the Managing Director, Tiruttani Co-Operative Sugar Mills Limited, Thiruvallangadu had instituted a suit in O.S.No.147 of 2011. The petitioner would claim that he purchased the entire property through registered sale deeds dated 03.06.2013 and 17.04.2015 from the said Govindan Kutty and presented for registration and after assigning pending documents in P.Nos.399/2013 and 18/2015, respectively. Since, the documents were not registered and released, the present writ petition has been filed.

4. Separate counter affidavits have been filed by the respondents 1 to 4 contending that the properties in dispute were already attached by the Tiruttani Co-Operative Sugar Mills Limited, Thiruvallangadu and in respect of the same properties, the suit was also pending and hence, the petitioner is not entitled for the relief sought for in the writ petition.

5. Mr.C.Shankar, learned counsel for the petitioner by placing reliance on the decision of this Court in S.Praveen Bohra Vs. Joint-I Sub-Registrar (In the cadre of District Registrar) Coimbatore reported in 2016 (3) CTC 493 would contend that the order of attachment cannot stand in the way of the respondents to register the document and the document can be registered subject to the order of attachment.

6. Per contra, the learned counsel appearing for the respondents would argue that admittedly, the petitioner purchased the property after the order of attachment and the title is not in dispute before the competent Civil Court and therefore, the writ petition has to be dismissed.

7. When a similar issue arose for consideration in the decision relied on by the petitioner, the learned Single Judge of this Court by following the orders passed in K.D.P.Properties Pvt.Ltd. V.The Sub-Registrar and other, 2013(1) CTC 609 (W.P. (MD) No.2635 of 2012, dated 13.3.2013) and M.Chitra V. The Sub-Registrar (W.P.(MD).No.14388 of 2014, dated 1.9.2014) allowed the writ petition, directing the respondent therein to register the document and release the same in favour of the petitioner. The relevant paragraphs are extracted hereunder :

" 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 M/s.K.D.P.Properties Private Limited vs. The Sub-Registrar and other, 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 and others vs. Swadeshi Polytex Limited and another, 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 claims 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, Kochiada, 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 vs. The Sub-Registrar, 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. In the light of the decisions cited supra, the Writ Petition is allowed and the respondent viz., Joint-I Sub-Registrar, Coimbatore, is directed to register the document and release the registered document in favour of the petitioner, within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.'

8. In the instant case, the respondents refused to register the sale deeds presented by the petitioner on the grounds of the order of attachment by the Registrar of Co-operative Societies and pendency of suit in O.S.No.147/2011. In my considered opinion, the decision referred above would squarely applied to the case on hand and hence, the writ petitioner is entitled to succeed in the writ petition.

9. Accordingly, the writ petition is allowed. The third respondent is directed to register the documents in P.Nos.399/2013 and 18/2015, dated 03.06.2013 and 17.04.2015 and release the registered documents in favour of the petitioner within a period of six weeks from the date of receipt of a copy of this order. However, the same would be subject to the result of the pending Suit. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ms

To

1.The Inspector General of Registration,
Registration Department,
Government of Tamil Nadu,
Santhome, Chennai - 600 028.

2.The District Registrar,
Administration,
Kancheepuram District.

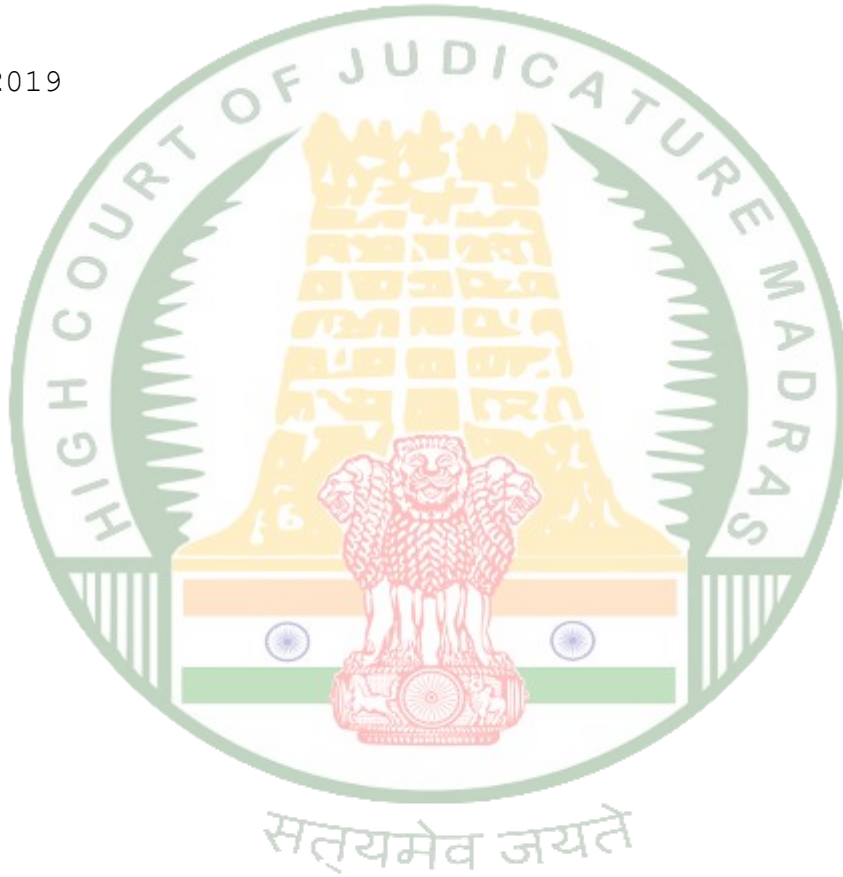
3.The Sub Registrar,
Sub-Registrar Office,
Thiruvallangadu.

4.The Managing Director,
Tiruttani Co-Operative Sugar Mills Ltd.,
Thiruvallangadu - 631 210.

+1cc to Government Pleader SR.NO. 76153
+1cc to Mr.L.P.Shanmugasundaram, Advocate sr.76037
+2cc to Mr.C.Shankar, Advocate sr.75092

W.P.No.17743 of 2017

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