



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN****W.P. (MD) No.6284 of 2018**

WEB COPY

Kaveri

... Petitioner

Vs

1.The Senior Branch Manager,
Bank of Baroda,
Pudhuvayal Branch,
No.6, Aranthangi Road,
Pudhuvayal,
Sivagangai District.

2.Shanmugam

... Respondents

(R2 is impleaded vide Court order dated
22.02.2019 in W.M.P.(MD)No.1843 of 2019 in W.P.
(MD)No.6284 of 2018)

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the respondent dated 12.12.2017 and quash the same and consequently direct the respondent to return back the documents which were deposited in Current Account No.04/89 with them to the petitioner.

For Petitioner

: Mr.Kathikeya Venkatechalapathy

For Mr.S.Madhavan

For Respondents

: Mr.Pala Ramasamy for R1

: Mr.K.Balasandram for R2

ORDER

Heard the learned counsel on either side.

2.The writ petitioner had purchased the building in G.R.S.F.No.77/8, bearing Door No.4-2-3, measuring seven cents in Pudhuvayal Village, Karaikudi Registration District, Sivagangai from the second respondent namely., Shanmugam through his Power Agent. It was a registered document. Even at the time of purchase, the property in question was under mortgage with the first respondent/Bank. The petitioner approached the first respondent and paid a sum of Rs.9,12,882/-. Thus the petitioner completely cleared the OD liability of the second respondent with the first respondent/Bank. Thereafter the petitioner called upon the first respondent/Bank to hand over the original title document. But the first respondent took the stand that they will hand over the same only to the second respondent. This stand taken by the first

respondent/Bank is assailed in this writ petition.

3. When the matter was taken up for hearing, the learned counsel appearing for the second respondent contended that he had already filed a suit in O.S.No.41 of 2013 before the Additional District Munsif Court, Karaikudi, questioning the sale transaction in favour of the writ petitioner. But then, as pointed out by the petitioner's counsel that the said suit was rejected on 09.10.2015. The second respondent herein had not questioned the said rejection of the plaint. Instead he chose to file a fresh injunction suit in O.S.No.41 of 2018 on the file of the Additional District Munsif Court, Karaikudi and the said suit is still pending.

4. As on date, it is only the writ petitioner, who is the owner of the petition mentioned property. Only if the second respondent obtains any decree against the writ petitioner before the jurisdictional Civil Court, he can dislodge the petitioner's right and claim the said property. As on date, he is not having any decree. The second respondent is also not having any order of interim injunction in his favour for restraining first respondent to hand over the document in question to the writ petitioner.

5. Since the petitioner had purchased the property in question through the Power Agent of the second respondent and since the transaction holding good as on date and since the petitioner liquidated the mortgage liability, the first respondent is bound to hand over the petition mentioned documents to the writ petitioner. The impugned communication is quashed.

6. The Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar (CS)

To:

The Senior Branch Manager,
Bank of Baroda,
Pudhuvayal Branch,
No.6, Aranthangi Road,
Pudhuvayal,
Sivagangai District.

+1cc to Mr.S.Madhavan, Advocate, SR.No.61961

+1cc to Mr.K.Baalasundharam, Advocate, SR.No. 61928

+1cc to Mr.Pala Ramasamy, Advocate, SR.No. 61938

W.P. (MD) No. 6284 of 2018