



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WEB COPY

W.P. (MD) No.8561 of 2019

1.S.Sivakumar

2.M.Rajendran

3.S.Murugesamoorthy

... Petitioners

Vs.

1. The District Registrar,  
Madurai District, Madurai.

2. The Sub Registrar  
Vadipatti Sub-Registrar Office  
Vadipatti, Madurai District.

3.Chellathai

4.S.Jothimani

... Respondents

**PRAYER** : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the 1<sup>st</sup> and 2<sup>nd</sup> respondents to consider the petitioner's representation dated 26.03.2019 and to remove the entry in the Encumbrance Certificate in column 12 (Order of attachment) registered in respect of the property in Survey Nos.78/3 and 78/5 measuring totally 2 Acres, 35 cents in Kulasekarankottai, Vadipatty Village, Vadipatty Taluk, Madurai District.

For Petitioners

:Mr.A.R.Sethupathy

For Respondents

:Mr.M.Murugan for R1 and R2

Government Advocate

Mr.D.Gandhiraj for R3

Mr.T.Palanisamy for R4

### ORDER

The prayer in the writ petition is for a writ of Mandamus to direct the 1<sup>st</sup> and 2<sup>nd</sup> respondents to consider the petitioner's representation dated 26.03.2019 and to remove the entry in the Encumbrance Certificate in column 12 (Order of attachment) registered in respect of the property in Survey Nos.78/3 and 78/5 measuring totally 2 Acres, 35 cents in Kulasekarankottai, Vadipatty Village, Vadipatty Taluk, Madurai District.

2. The short facts leading to the filing of this writ petition are as follows:

That the property ie., at S.Nos.78/3 and 78/5 measuring totally 2 acres 35 cents of Kulasekarankottai, Vadipatti Village is the subject matter and the said property was purchased by a valid sale deed by these petitioners jointly on 04.11.2009 from one C.N.Govindan and one Mahesan. According to the petitioners, the said C.N.Govindan and Mahesan, ie., the vendors of the petitioners earlier ie., in the year 2004, purchased the property from the fourth respondent, namely, Tmt.S.Jothimani.

2.1. While that being so, the third respondent Tmt.Chellathai has filed a civil Suit in O.S.No.300/2004 on the file of the III Additional Sub Court, Madurai, initially, for recovery of money for a sum of Rs.1,25,800/- with interest. In the said suit, originally, the said fourth respondent was shown as the defendant. However, subsequently the vendor of the petitioners, ie., C.N.Govindan and Mahesan were also impleaded as defendants. Accordingly, the suit was tried and decided by the judgment dated 16.10.2012.

2.2. In the said judgment and decree, the civil Court decreed the money suit in favour of the plaintiff Chellathai only against first defendant S.Jothimani and the suit was dismissed against C.N.Govindan and Mahesan, ie., the vendors of the petitioners.

2.3. In this context, it is further to be noted that, sometime in the year 2009, during the pendency of the said suit, an order of attachment seems to have been passed by the civil Court against the fourth respondent herein/the first respondent in the suit, on the ground that, the said land originally belongs to the fourth respondent. Therefore, the said attachment order has been given effect to by making entry in the concerned Registrar's office.

2.4. However, the said subject land was sold as early as on 04.11.2009 by the vendors of the petitioners, namely, C.N.Govindan and Mahesan for a valid consideration to these petitioners, who are the joint purchasers of the subject land.

2.5. Though the suit filed by the third respondent was dismissed, even against the vendors of the petitioners, as early as in 2012, the entry made subsequent to the interim attachment made in the said suit by the civil Court has not been rectified and in this context, it is the grievance of the petitioners that, when encumbrance certificate is applied for, it reflects the attachment order passed on 30.09.2011 by the civil Court, as if the subject land belongs to the petitioners. Only in that context, in order to rectify the same, the petitioners had approached the official respondents ie., the



registration department by filing representation on 26.03.2019.

2.6. Since no action seems to have been taken by the respondents 1 and 2 on the said representation filed by the petitioners, the petitioners approached this Court by filing the present writ petition with the aforesaid prayer.

3. I have heard the learned counsel for the petitioner, the learned Government Advocate for the respondents 1 and 2, the learned counsel for the respondents 3 and 4. They submitted that, the suit filed by the third respondent was decreed against the fourth respondent/first respondent in the suit and the suit filed by the third respondent was dismissed against the vendors of the petitioners and therefore, if at all any attachment order was passed in the interregnum ie., during the pendency of the suit and the decree so passed only against the fourth respondent, namely, S.Jothimani, who already sold the property in question to the vendors of the petitioners, certainly, the said encumbrance shown as if that, the properties in question or subject land has been encumbered by virtue of the attachment order passed by the civil Court dated 30.10.2011, is a wrong entry and therefore, rectification has to be made.

4. The said factual matrix, since cannot be disputed, as civil Court decree has already been filed before this Court and the same has become final. In this context, the learned Government Advocate appearing for the official respondents submits that, in view of the said factual matrix, the representation of the petitioner, dated 26.03.2019 would be considered by the respondents 1 and 2 and necessary orders rectifying the mistakes that, wrong reflection of encumbrance shown in the encumbrance certificate, would be made within a time frame.

5. Considering the said submission made by the learned respective counsel for the parties and by taking into account the aforesaid factual matrix, this Court is inclined to dispose of this writ petition with the following direction:

"That the respondents 1 and 2 are hereby directed to take into account the aforesaid discussion made in this order and also the civil Court decree passed in the civil Suit ie., in O.S.No.300/2004 on the file of the III Additional Sub Court, Madurai dated 16.10.2012 and also taking into account the sale deed, dated 04.11.2009 under which, the petitioners' vendor purchased the subject land from their vendors and accordingly, take necessary action of rectification by removing the wrong entry made in the concerned documents pertaining to the order of attachment passed by the civil Court in O.S.No.300/2004 and



accordingly issue a rectified encumbrance certificate to the petitioners. The needful as indicated above shall be undertaken by the respondents 1 and 2 within a period of six weeks from the date of receipt of a copy of this order."

No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar(CS )

RR

To

1. The District Registrar,  
Madurai District, Madurai.
2. The Sub Registrar  
Vadipatti Sub-Registrar Office  
Vadipatti, Madurai District.

+1CC TO M/S.T.R.SUBRAMANIAN, ADVOCATE, SR.NO.69859  
+1CC TO M/S, D.GANDHIRAJ, ADVOCATE, SR.NO.70426  
+1CC TO M/S.T.PALANISAMY, ADVOCATE, SR.NO.70004

**W.P. (MD) No.8561 of 2019**

**19.06.2019**

**BUC (02/07/2019) 4P/6C**