



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD) No.15252 of 2019

WEB COPY

Senthil Murugan

... Petitioner

vs.

1) The Sub Registrar,
Ottapidaram,
Thoothukudi District.

2) Selvakumar

3) Balamurugan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the 1st respondent to release the document pending in P/Ottapidaram/7/2019 after completing the registration to the petitioner within stipulated time.

For Petitioner : Mr.T.A.Ebenezer

For R1 : Mr.M.Murugan,
Government Advocate

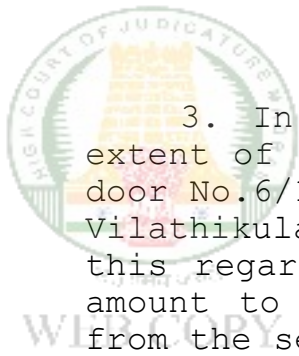
For R2 : No Appearance

For R3 : Mr.R.Ashok Kumar

O R D E R

The prayer sought for in this Writ Petition is for a Writ of Mandamus seeking for issuance of a direction to the 1st respondent to release the document pending in P/Ottapidaram/7/2019 after completing the registration to the petitioner within stipulated time.

2. Heard the learned counsel for the petitioner. Since no adverse orders are going to be passed against the second respondent, and the interest of the second respondent is also protected by the petitioner, who is said to be the purchaser of the land in question, notice to the second respondent is dispensed with. Although notice has been served on the second respondent, no one appeared for the second respondent.



3. In respect of property at S.No.34/1A2 & 1B1 measuring an extent of 1473 sq.feet and the house built in the said land bearing door No.6/11, old ward no.1, new ward no.10, Kamarajar nagar Street, Vilathikulam Town originally belongs to the second respondent and in this regard, it seems that the third respondent advanced some loan amount to the second respondent and in order to recover the same from the second respondent, he filed a recovery suit in O.S.No.99 of 2019 before the Sub Court, Kovilpatti and in the said suit, he also filed an Interlocutory Application for attachment before judgment and the said application was allowed by the learned Judge by order dated 28.06.2019 pursuant to which, an order dated 01.07.2019, attachment order has been released.

4. In the meanwhile, the property in question, that belongs to the second respondent has been sold to the petitioner and according to the petitioner, the sale deed was prepared on 27.06.2019 and was submitted or presented before the first respondent for registration on 28.06.2019. However, the sale was not registered on the ground that an attachment before judgment order was passed by the competent civil court as stated above. Therefore, against such action on the part of the first respondent, the petitioner has filed this writ petition with the aforesaid prayer.

5. I have heard Mr.T.A.Ebenezer, learned counsel appearing for the petitioner, who would submit that since the document in question has been submitted for registration on 28.06.2019 and the same was preferred on 27.06.2019 and thereafter on 28.06.2019, before the first respondent there was no order of attachment from any competent civil Court and therefore, withholding the same for some time till 01.07.2019, till the order of attachment reaches the office of the first respondent may not be justifiable on the part of the first respondent and therefore, a Mandamus has been sought for with the aforesaid prayer.

6. However, Mr.R.Ashok Kumar, learned counsel appearing for the third respondent has filed a counter affidavit and also the typed set of documents and would submit that the I.A. was moved and heard and decided by the learned Judge on 28.06.2019 itself, where the learned Judge has passed the order of attachment, which reads thus:

" I.A.217/2019

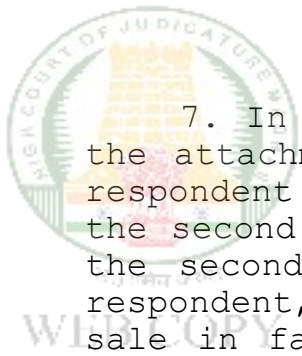
in

O.S.99/19

28.06.2019 Order Pronounced

In result, for the above discussed the reasons, this petition is allowed and attachment is ordered. For attachment batta by 12.07.2019.

Sub-Judge,
Kovilpatti."



7. In view of the said order having been passed on 28.06.2019, the attachment order since has to be taken on record by the first respondent and knowing well that, the suit has been filed against the second respondent, who is the borrower of the third respondent, the second respondent in order to defeat the claim of the third respondent, might have encumbered the property by making an urgent sale in favour of the petitioner. However, on the date, the said sale deed claimed to have been presented for registration and there has been an order of attachment by the competent civil court and therefore, there is justification on the part of the first respondent to refuse the registration of the sale deed.

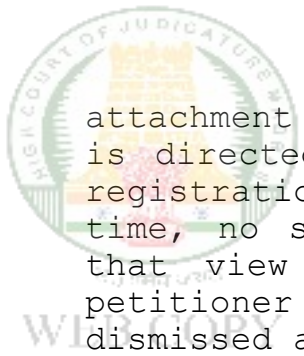
8. I have also heard Mr.M.Murugan, the learned Government Advocate appearing for the first respondent, who would submit that, even though if the deed in question has been presented for registration on 28.06.2019, the same has to be scrutinised and after scrutinising the same and satisfied that, on all respect, the document is perfect for admitting the same for registration, before which, since the order of attachment passed by the civil court has been brought to the notice of the first respondent, he cannot proceed further, as the said order, according to the third respondent claimed to have been passed on 28.06.2019 itself, the date on which the deed was presented. Therefore, the first respondent taken right decision not to register the documents.

9. I have heard both the parties and perused the materials placed before this Court.

10. As it has been pointed out by the learned counsel appearing for the third respondent, the suit was moved along with an interlocutory application filed in I.A.No.217 of 2019 and it was also moved in O.S.No.99 of 2019 on the file of the Sub Court, Kovilpatti, where the learned Judge has passed an order on 28.06.2019 as has been extracted above, whereby attachment was ordered.

11. Since the said order having been passed on 29.06.2019, assuming that the same was presented for registration on 28.06.2018 on that day itself, there was an order of attachment passed by the civil court and moreover, after scrutinising the documents, the Registrar came to know that the order of attachment has been passed and therefore, they have got any justification to register the documents.

12. In that view of the matter, this Court feels that the Mandamus sought for by the petitioner cannot be issued to the first respondent to register the documents. If at all the petitioner has got any grievance over the second and third respondents, he can work out his remedy by getting impleaded as one of the party to the suit



attachment is effected by the competent civil court, where the issue is directed, it is open to the petitioner to seek his remedy for registration of documents before the first respondent. Till such time, no such plea can be raised before the first respondent. In that view of the matter, the Mandamus as sought for by the petitioner cannot be granted. In the result, this Writ Petition is dismissed accordingly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

sts
To
The Sub Registrar,
Ottapidaram,
Thoothukudi District.

+1 CC to M/s.R.ASHOK KUMAR, Advocate (SR-80717[F] dated 08/08/2019)

+1 CC to M/s.SPL GP (SR-81144[F] dated 09/08/2019)

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-81067[F] dated 09/08/2019)

W.P. (MD) No.15252 of 2019
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KK/SAR/13.11.2019/4P-5C/