



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.23160 of 2017

R.Santhana Mahalingam

.. Petitioner

Vs.

1.The Sub Registrar,
Sub Registrar Office,
Peraiyur,
Madurai District.

2.The Assistant Director,
Tamil Nadu Khadi and Village Industries Board,
Madurai - 10.

3.R.Sundara Mahalingam (Died)

4.S.Lakshmi

5.S.Muthu Lakshmi

6.S.Sankaranarayanan

7.S.Thangavel

8.S.Vellaiammal

.. Respondents

(Respondents 4 to 8 were substituted as the legal representative of deceased R.Sundara Mahalingam (3rd respondent in the writ petition) as per the order passed in W.M.P.(MD).No.13033 of 2018, in WP(MD) No.23160 of 2017 dated 18.12.2019)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 1st Respondent herein in his proceedings in XXXN.DIS/2017, dated 23.10.2017 and quash the same as illegal and further direct the 1st Respondent to accept the redemption receipt dated 17.10.2016 issued by the 2nd Respondent and remove the encumbrance of mortgage deed No.209/1996 in the Encumbrance Certificate related to the property in Door No.12-1-35F, Survey No.128/1, South Street, Peraiyur, Madurai District forthwith.

For Petitioner: Mr.S.Rajesh Kannan for Mr.D.Nallathambi



For Respondents

: Mr.A.Muthu Karuppan
Additional Government Pleader for R1
Mr.Raguwaran Gopalan for R2

ORDER

This writ petition is filed for issuing a writ of Certiorarified Mandamus to quash the order passed by the first respondent in his proceedings, dated 23.10.2017 and further direct the first respondent to accept the redemption deed, dated 17.10.2016, issued by the second respondent to remove the encumbrance of mortgage deed, since the encumbrance relates to the property of petitioner.

2.The petitioner is the owner of the property in S.No.128/1 measuring an extent of 2 cents with a building therein. It is the case of the petitioner that during the life time of his mother Velammal, she executed a registered Will, dated 04.11.1997, in respect of this property and that his mother died on 21.09.2006. The third respondent who is the petitioner's brother, mortgaged the property with the second respondent and got loan sanctioned for Rs.6,600/-. The said mortgage was registered as document No.209/1996 before the first respondent. Though the loan was sanctioned, it is stated that the third respondent did not avail the loan. In the said context, it is the case of petitioner that the petitioner approached the second respondent for redemption/cancellation of mortgage. The second respondent issued a redemption certificate in favour of the third respondent. The petitioner also received a copy from his brother. Despite the redemption certificate issued by the second respondent is produced before the first respondent, the first respondent by the impugned order refused to consider the petitioner's representation for cancelling or releasing the encumbrance.

3.However, the learned counsel for the petitioner submitted that the impugned order, dated 17.10.2016 issued by the second respondent without considering the redemption certificate is unsustainable. It is further contended by the learned counsel for the petitioner that the impugned order is without an application of mind and the reasons for rejecting the application are irrational. Pointing out that the impugned order is to the effect that the second respondent should appear before Registering Officer, the counsel for the petitioner states that the mechanical way, in which the issue was considered, shows the arbitrariness and hence the impugned order is liable to be quashed.

4.Though the learned counsel for the second respondent has serious objections by stating that his officer is being unnecessary dragged in, the counsel would also submit that the second respondent is prepared to depute an Authorised Officer, if this court directs. Hence, without going into the contentious issues, whether the Sub



Registrar is justified in requiring the personal appearance of the second respondent or the authorised person, this Court is inclined to pass the following direction, so that the petitioner may not face any other problem and the lis can be put to an end.

5. Therefore, the second respondent is directed to depute his authorised agent to appear before the first respondent within a period of two weeks to confirm the fact that the certificate regarding redemption of mortgage was issued by the second respondent. Upon appearance of the second respondent through an authorised officer, the first respondent is directed to accept the redemption certificate, dated 17.10.2016, issued by the second respondent and remove the encumbrance of mortgage deed by document No.209/1996 in the encumbrance related to the property of petitioner door No.12-1-35F, in S.No.128/1, South Street, Peraiyur, Madurai District within a period of two weeks from the date of appearance of the authorised officer of the second respondent after following usual formalities.

6. Accordingly, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar(CS 3)

TM

To

1. The Sub Registrar,
Sub Registrar Office,
Peraiyur,
Madurai District.

2. The Assistant Director,
Tamil Nadu Khadhi and Village Industries Board,
Madurai- 10.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-105657[F] dated 18/12/2019)

+1 CC to M/s.RAGUVARAN GOPALAN, Advocate (SR-105765[F] dated 18/12/2019)

W.P.(MD).No.23160 of 2017

18.12.2019

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