

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.11830 of 2020

C.Krishnamoorthy

... Petitioner

Vs.

1 The Inspector General of Registration, Chennai

2 The District Registrar,
District Registrar Office, Tirupattur District.

3 The Sub Registrar
Natrampall, Tirupattur District.

4 Govindammal

...Respondents

PRAYER : This Writ Petition is filed under Article 226 of Constitution of India, seeking a Writ of Mandamus, directing the 2nd Respondent to consider the representation of the petitioner dated 17.06.2020.

For Petitioner : Mrs.S.Premakumari
for M/s.Karan and Udhay

For Respondents : Mr.T.M.Pappiah
Special Government Pleader

O R D E R

This Writ Petition has been filed for the issue of a Writ of Mandamus directing the respondents to consider the representation made by the petitioner on 17.06.2020 and to cancel the entry made on 12.07.1990, through which a mortgage deed was registered in Document No.503 of 1990.

2. The case of the petitioner is that he and his mother borrowed money from the fourth respondent and a mortgage deed was executed in favour of the fourth respondent, which was registered on 12.07.1990 as Document No.503 of 1990. The further case of the petitioner is that the amount has been repaid to the fourth respondent, however, the fourth respondent has not chosen to cancel the mortgage. The petitioner made a

representation to the respondents to cancel the entry made in the records, since the amount has been repaid and the limitation period for recovery of money has also expired. Since this was not considered, the present Writ Petition has been filed before this Court.

3. Learned counsel for the petitioner submitted that the amount has been repaid in the year 1992. However, the fourth respondent did not come forward to cancel the document. The learned counsel further submitted that even assuming, without admitting that the amount has not been repaid, the fourth respondent has lost the right to recover the amount, since it is barred by limitation. Therefore, it was contended that the entry should be cancelled in the records.

4. Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the respondents submitted that the respondents cannot entertain any such unilateral cancellation of the mortgage deed. The learned Special Government Pleader further submitted that a cancellation deed must be executed by the fourth respondent and only then, the earlier entry can be reversed. Therefore, the learned Special Government Pleader submitted that the representation given by the petitioner cannot be considered.

5. The specific case of the petitioner is that the amount that was borrowed from the fourth respondent has been repaid and inspite of the same, the mortgage has not been cancelled. If the petitioner had repaid the amount and the mortgage had not been cancelled, the petitioner had a right under the Transfer of Property Act to file a suit for redemption. The petitioner has not resorted to this remedy and admittedly, no suit had been filed.

6. The only ground on which the petitioner wants to cancel the entry, is that the fourth respondent has lost the right to recover the amount from the petitioner, since it is barred by limitation. It must be borne in mind that the law of limitation does not take away the right and what is lost is only the remedy. Any claim that is barred by limitation cannot be enforced in a Court of law, even though the right is there. Therefore, the fact that the fourth respondent had not come forward to recover the amount from the petitioner, assuming that the petitioner has not repaid the amount, does not create a cause of action for the petitioner to seek for cancellation of entry of the mortgage that was registered in the year 1990. The petitioner is sufficiently safeguarded by the operation of law, since the remedy has been lost by the fourth respondent. That is sufficient to sustain the title and right over the property through operation of law. No useful purpose will be

served in directing the respondents to consider the representation made by the petitioner.

7. This Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mra

To

- 1 The Inspector General of Registration,
Chennai
 - 2 The District Registrar
District Registrar Office
Tirupattur District.
 - 3 The Sub Registrar
Natrampall
Tirupattur District.
 4. The Government Pleader,
High Court, Madras.
- +1 cc to The Government Pleader, Sr.No. 29269

KK(CO)
RMP(13/10/2020)

W.P.No.11830 of 2020

सत्यमेव जयते

WEB COPY