

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.15188 of 2020 &
WMP.No.18982 of 2020

P.M. Uma Maheswari

... Petitioner

Vs.

1. The Sub Registrar,
Adyar Sub Registrar Office,
Adyar, Chennai 600 020.

2. The District Registrar,
Chennai South,
Guindy, Chennai.

3. A.R.Azam Khan

4. A.R.Mohamed Salaieh

5. M.Sikkanthar

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus to call for the records in R.C.No.219/2020 dated 10.03.2020 on the file of the first respondent and quash the same and consequently direct the first respondent to delete the attachment entry dated 05.11.2019 bearing Doc.No.22/2019 and register the Sale Certificate dated 14.09.2019 issued by YES Bank to petitioner conveying the Secured Asset being House and Ground at Plot No.97, Old Door No.2, New Door No.3, 1st Loop Street, Kottur Garden, Kotturpuram, Chennai.

For Petitioner : Mr.B.Murugavel

For Respondents: Mr.T.M. Pappiah,
Spl. Govt. Pleader

O R D E R

On consent given by either side, the main Writ petition itself was taken up for final hearing and this order is passed.

2. This Writ Petition has been filed challenging the rejection letter issued by the 1st respondent dated 10.3.2020 and for a consequential direction to the 1st respondent to register

the sale certificate dated 14.10.2019 issued in favour of the petitioner with respect to the subject property.

3. The case of the petitioner is that respondents 3 and 4 borrowed money from M/s. YES Bank Limited during the year 2014 and created a mortgage by deposit of title deeds in favour of the Bank on 3.12.2014. The 3rd and 4th respondents defaulted in payment of the loan and their account was categorised as a non performing asset. Thereafter, proceedings were initiated under the SARFAESI Act.

4. The Bank conducted an e-auction and brought the property belonging to the 3rd and 4th respondents for sale and the petitioner was the highest bidder and sale confirmation was issued to the petitioner on 22.08.2019. After he deposited the entire auction amount, the Bank executed a sale certificate in favour of the petitioner on 10.09.2019. When the sale certificate was presented for registration before the 1st respondent, it was refused to be registered by the 1st respondent on the ground that there is an order of attachment before judgment passed in O.S.No.5299 of 2019. Aggrieved by the same, the present Writ Petition has been filed before this Court.

5. Heard Mr.N.B.Murugavel, learned counsel appearing for the petitioner and Mr.T.M.Pappiah, learned Special Govt. Pleader appearing for the respondents 1 and 2.

6. It is clear from the records that respondents 3 and 4 have obtained loan from the Bank in the year 2014 and the mortgage by deposit of title deed was created by document dated 3.10.2014. A reading of the plaint filed in C.S.No.843 of 2018 (transferred and re-numbered as O.S.No.5299 of 2019 before the IV Additional City Civil Court, Chennai) filed by the 5th respondent against respondents 3 and 4 shows that a hand loan was received by respondents 3 and 4 from the 5th respondent only on 11.8.2017. When the suit was filed for recovery of this loan amount, an order of attachment before judgment came to be passed by the City Civil Court in the year 2019. All these events have taken place much after the mortgage was created in favour of the Bank in the year 2014 itself. Therefore, the subsequent borrowal of the amount by respondents 3 and 4 from the 5th respondent and the attachment before judgment order passed, will not bind the Bank and the law on this issue has been well settled by the judgments of the Honourable Supreme Court and this Court.

7. This Court has repeatedly held that in such cases, the order of attachment cannot be made a ground to refuse registration. Useful reference can be made to the judgment of

this Court in the case of Pegasus Assets Reconstruction Pvt. Ltd. Vs. Inspector of General Registration, Government of Tamil Nadu and another reported in 2019 (4) CTC 851 and the relevant paragraphs are extracted hereunder;

8. The above issue involved in this case is no more res integra in view of the fact that the very same issue was already considered by this Court and decided against the registering authority in a decision made in W.P.No.10647/2007 dated 13.10.2018. In fact, this Court, while passing the said order, followed the order passed in W.P.(MD).No.2632/2012 dated 13.03.2013, which in turn, followed the decision of the Apex Court reported in 1985 (2) SCC 167 (Balkrishan Gupta v. Swadeshi Polytex Limited). Paragraph Nos. 7 and 8 of the said order reads as follows:

7. The point for consideration in this writ petition is whether the respondent is entitled to refuse registration of the sale deed on the ground that the subject matter properties of the sale deed are under Court attachment. The very same issue was considered by this Court in W.P.No.36079 of 2015 reported in 2016 (3) CTC 493 (S.Praveen Bohra vs. Joint-I Sub- Registrar) and the learned Judge found that the order of attachment cannot be a bar to register the document. In order to arrive at such conclusion, the learned Judge relied on several decisions of this Court as well as Apex Court. At paragraph Nos.6 to 9 of the said decision, the learned Judge has observed as follows:

6. It is relevant to refer to the unreported judgment of the Madurai Bench of Madras High Court in W.P.(MD) No. 2635 of 2012, dated 13.03.2013, in the case of K.D.P. Properties Private Limited v. The Sub-Registrar, relied on by the learned counsel for the petitioner, wherein, in paragraph No. 18, a reference was made to the decision of the Hon'ble Apex Court reported in (1985) 2 SCC 167, Balkrishan Gupta v. Swadeshi Polytex Limited, and it was held as follows:

"18. In (1985) 2 SCC 167 (supra), the Hon'ble Supreme Court has held as under:

"30. The consequence of attachment of certain shares of a company held by a shareholder for

purposes of sale in a proceeding under section 149 of the Land Revenue Act is more or less the same. The effect of an order of attachment is what Section 149 of the Land Revenue Act itself says.

Such attachment is made according to the law in force for the time being for the attachment and sale of movable property under the decree of a civil court. Section 60 of the Code of Civil Procedure, 1908 says that except those items of property mentioned in its proviso, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities of money, debts, shares in a corporation and all other saleable property, moveable or immovable, belonging to a judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor, or by another person in trust for him or on his behalf, is liable for attachment and sale in execution of a decree against him. Section 64 of the Code of Civil Procedure, 1908, states that where an attachment of a property is made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment. What is forbidden under Section 64 of the Code of Civil Procedure is a private transfer by the judgment-debtor of the property attached contrary to the attachment, that is, contrary to the claims of the decree holder under the decree for realisation for which the attachment is effected. A private transfer under Section 64 of the Code of Civil Procedure is not absolutely void, that is, not void as against all the world but void only as against the claims enforceable under the attachment. Until the property is actually sold the judgment debtor retains title in the property attached. Under Rule 76 of Order 21 of the Code of Civil Procedure, 1908, the shares in a corporation which are attached may be sold through a broker. In the alternative such shares may be sold in public auction under Rule 77 thereof. On such sale either under Rule 76 or under Rule 77, the purchaser acquires title. Until

such sale is effected, all other rights of the judgment debtor remain unaffected even if the shares may have been seized by the officer of the court under Rule 43 of Order 21 of the Code of Civil Procedure, 1908 for the purpose of effecting the attachment, or through a Receiver or through an order in terms of Rule 46 of Order 21 of the Code of Civil Procedure may have been served on the judgment debtor or on the company concerned".

19. The dictum laid down in the above judgment (1985) 2 SCC 167 (supra), gives a fitting answer to the issue raised in <http://www.judis.nic.in> this writ petition. So far as the order of attachment passed by the DRT is concerned, the transfer is not void generally but it is void only as against the claims enforceable under the said attachment. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale. However, if the 2nd respondent bank exercises its right as against the property, the petitioner cannot raise any objection because the sale of the vendor in favour of the petitioner is void in respect of the order of attachment obtained by the 2nd respondent bank. So, even if the property is sold in favour of the petitioner, the 2nd respondent bank can always exercise its right as against the said property.

20. In view of the above finding, I am of the opinion that the sale of the subject property pending the order of attachment is void only as against the claims enforceable under the order of said attachment and not in respect of other claims. Therefore, the sale of the property, which is under attachment, cannot be said as illegal.

In the light of what is stated above, the writ petition is allowed and the 1st respondent-Sub Registrar, Kochiadai, Madurai, is directed to release the registered document in favour of the petitioner within a period of one week from the date of receipt of a copy of this order. No costs."

7. It is also worthwhile to refer to the unreported judgment of Madurai Bench of Madras High Court in W.P.(MD) No. 14388 of 2014, dated 01.09.2014, in the case of M. Chitra v. The Sub-Registrar, relied on by the learned counsel for

the petitioner, wherein, in paragraph No. 5, it was held as follows:-

"5. In such circumstances, merely because there is an order of attachment passed by a Civil Court, the same cannot be a ground to refuse to register the Memorandum of Deposit of Title Deeds. If any deposit of title deeds is created in respect of the said property pursuant to the right acquired by the petitioner, vide settlement deed, dated 04.07.2011 it is always subject to further orders to be passed by the Civil Court. The petitioner's case is that she acquired title by way of settlement deed dated 04.07.2011, much prior to the order of attachment. Further, the learned counsel appearing for the petitioner placed reliance on Order 38, Rule 10 C.P.C. stating that attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree. The lending bank namely, Canara Bank, Vadamadurai if satisfies with the title of the petitioner over the property, can request the Registrar to register the document. In such circumstances, merely because an order has been passed by the Civil Court effecting attachment, cannot be a bar for entertaining a document for registration. Hence, the reasons assigned by the respondent refusing to register, vide his memo, dated 25.07.2014, is not in accordance with law beyond the scope of Section 71 of the Act."

8. Thus, it is crystal clear that it is well settled principle of law that the order of attachment cannot be a bar to register the document. Therefore, I am of the view that there is no need for this petitioner to file an appeal. I am of the opinion that the sale of the subject property, pending the order of attachment is void only as against the claims enforceable under the order of said attachment and not in respect of other claims. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale.

9. Since the issue involved in this case is squarely covered by the above decision of this Court in favour of the petitioner, this Writ Petition is allowed and the 2nd respondent is

directed to register the assignment agreement dated 28.02.2007(Pending document No.P59/2007), as it is admitted by the 2nd respondent in the counter affidavit that there is no issue as regards levy of stamp duty or registration fee, as the petitioner has duly paid the same. The 2nd respondent shall comply with the order passed in this writ petition within a period of two weeks from the date of receipt of a copy of this order. No costs."

8. In view of the above, the order of attachment passed by the Civil Court in the year 2019 will have absolutely no binding effect in so far as the Bank is concerned. Consequently, the petitioner who was the successful bidder and who has been issued sale certificate cannot be prevented from registering the sale certificate. The sale of the property, pending an order of attachment is void only as against the claims enforceable under the order of the said attachment and not in respect of the other claims. If the same is done, an unscrupulous borrower can always stop registration of sale certificate by way of filing a collusive suit. In view of the above, this Court has absolutely no hesitation to interfere with the impugned rejection letter issued by the 1st respondent dated 10.06.2020 and the same is hereby quashed. The 1st respondent is directed to receive the sale certificate presented by the petitioner for registration and the same shall be registered, if it is otherwise in order and the necessary stamp duty and registration fee is paid at the time of registration. The document shall also be released after registration.

9.The writ petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते
s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

msr

To

1. The Sub Registrar,
Adyar Sub Registrar Office,
Adyar, Chennai 600 020.

2.The District Registrar,
Chennai South,
Guindy, Chennai.

+1 CC to The Govt. Pleader sr 35455.

W.P.No.15188 of 2020 &
WMP.No.18982 of 2020

MG (CO)
SP (23/11/2020)



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