

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.17901 of 2020

and

WMP No.22189 of 2020

1.Sabapathi Palanisamy

2.Selvakumari

Petitioners

. Vs.

1. The Sub Registrar,
Avinashi,
Tirupur District.

2 .Pubjab National Bank
Formerly Oriental Bank of Commerce
Rep. by its Authorised officer
C.G. Ranjith S/o. G. Gangadharan Nayar,
434 Mayflower Arcade ,
Oppanakara Street,
Coimbatore 641 001.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent check slip dated 20.10.2020 and to quash the same and consequently to direct the 1st respondent to register the Sale certificate 14.10.2020 executed by the 2nd respondent in favour of Petitioners.

For Petitioners : Mr.Ashwin Kumar

For RR 1 : Mr.T.M.Pappaiah
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned refusal check slip issued by the 1st respondent dt. 20.10.2020, refusing to register the sale certificate presented by the petitioners for registration on the ground that an order of attachment has been passed by a competent

Civil Court and the same is reflected in the Encumbrance certificate.

2. The subject property was originally owned by one Mr. Shanmugam, who borrowed money from the 2nd respondent Bank. He along with his wife executed a Memorandum of Deposit of Title Deed dt. 01.12.2009, in favor of the 2nd respondent Bank and the same was registered on the file of the 1st respondent in Document No.11506 of 2009. The borrower committed default and his account was declared as NPA and proceedings were initiated by the 2nd respondent under the SARFAESI Act.

3. The subject property was ultimately brought for public auction on 26.12.2019 and the petitioners were the successful bidders and the sale was also confirmed in their favour.

4. The 2nd respondent Bank issued a Sale Certificate dt. 14.10.2020, in favour of the petitioners. The petitioners presented the Sale Certificate for registration before the 1st respondent and the same was refused to be registered on the ground that an Order of Attachment has been passed in the execution proceedings pursuant to a Judgment and Degree passed in O.S.No.3 of 2017, by the Sub Court, Avinashi. Aggrieved by the same, the present writ petition has been filed before this Court.

5. Heard Mr.M.Ashwin Kumar, learned counsel for petitioners and Mr.T.M.Pappaiah, learned Special Government Pleader appearing on behalf of the 1st respondent.

6. The issue involved in the present Writ Petition is squarely covered by the earlier Order passed by this Court in W.P.No.16523 of 2020 dt. 07.12.2020. The relevant portions in the order are extracted hereunder:

10. The issue involved in the present writ petition is squarely covered by the earlier orders passed by this Court. One such order, passed in W.P.No.7497 of 2019 dated 26.04.2019 can be relied upon for the purpose of this case. The relevant portions of the order are extracted hereunder:

''3. The issue as to whether the 2nd respondent is entitled to refuse registration of the document presented by the petitioner on the ground that the subject matter property is under Court attachment, is no more res integra, in view of the several orders passed by this Court in similar issue deciding against the Registration Department. One such recent

order was passed by this Court in W.P.No.1094/2019 dated 26.03.2019, wherein it is observed as follows:

"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 SubRegistrar, 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, banknotes, 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, movable 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 claim 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 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.

4. Accordingly, I find that the reasons stated by the 2nd respondent in refusing to register the document, cannot be sustained. Thus, the Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the 2nd respondent to consider the document viz., Decree dated 03.03.2018, submitted by the petitioner, for registration. Such exercise shall be done by the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order. No costs.'

11. It can be seen from the above order that the learned Single Judge has placed reliance upon the orders passed by the Hon'ble Division Bench and also the Judgment of the Hon'ble Apex Court, which was in turn relied upon by the Division Bench. The ratio in the above order is that an order of attachment cannot be a bar to register a document. The reason being that the sale of a subject property pending the order of attachment is void only as against the claims enforceable under the order of attachment and not in respect of other claims. Therefore, the sale of the property, which is under attachment, cannot be said to be illegal where the parties to the transaction have nothing to do with the pending proceedings in which the order of attachment was passed.

7. The Attachment Order passed in the Civil Suit will not in any way bind the 2nd respondent Bank since the mortgage was created in the year 2009 itself and the Suit in question was filed only in the year 2017. The 2nd respondent being a secured creditor, will have a priority in recovering the debt. Even otherwise the sale of property which is under attachment, cannot be said to be illegal where the parties to the transaction have nothing to do with the civil proceedings in which the Attachment Order was passed. The Order of Attachment cannot be a bar to register the Sale Certificate presented for registration before the 1st respondent.

8. In view of the above discussion, the impugned refusal check-slip issued by the 1st respondent is hereby quashed. The 1st respondent is directed to register the Sale Certificate dt.14.10.2020, presented by the petitioners, if it is otherwise in order and the necessary stamp duty and

registration fee is paid. The Sale Certificate shall be returned to the petitioners after registration.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP
To

1.The Sub Registrar,
Avinashi,
Tirupur District.

2.The Authorised officer
Pubjab National Bank
Formerly Oriental Bank of Commerce
C.G. Ranjith S/o. G. Gangadharan Nayar,
434 Mayflower Arcade ,
Oppanakara Street,
Coimbatore 641 001.

+1cc to Mr.M.Aswin Kumar, Advocate SR.40536
+1cc to the Government Pleader SR.40682

CP(CO)
CB(11/01/2021)

W.P.No.17901 of 2020

सत्यमेव जयते

WEB COPY