

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.17713 OF 2020

M/s.Syhims Granite Private Limited,
represented by its Managing Director
K.Yusuff Basha

.. Petitioner

Vs

The Sub Registrar,
Suramangalam Sub Registrar Office,
Salem-5.

.. Respondent

Prayer:

Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Mandamus directing the respondents to delete the entry in document No.3774/2008 dated 23.5.2008 in the Encumbrance Certificate concerning property bearing survey No.16/1 of an extent of 39187 sq.ft. Pursuant to the representation dated 24.09.2020 made by the petitioner.

For petitioner : Mr.V.Vijay Shankar

For Respondents: Mr.T.M.Pappiah,

Spl.Govt.Pleader

ORDER

This Writ Petition has been filed for the issue of Writ of Mandamus directing the respondent to delete the entry made in the Encumbrance Certificate by acting upon the representation made by the petitioner on 24.09.2020.

2. The case of the petitioner is that the subject property was mortgaged by one M/s.Akilandeswari Mills Limited while borrowing money from a Financial Institution. Ultimately, the account of the borrower was declared as an NPA and the Financial Institution proceeded further for recovering the money under the SARFASEI Act. The subject property was brought for sale by the asset reconstruction company and the petitioner had purchased the property by virtue of a sale certificate dated 30.12.2008

and the same was registered as Document No.8050 of 2008 before the respondent.

3. The petitioner while applying for the Encumbrance Certificate, noticed that the original borrower in order to defeat the rights and claims of the Financial Institution, had created a sale agreement and it was also registered before the respondent on 23.5.2008. The problem that is faced by the petitioner is that this entry that was made in the year 2008, is being put against the petitioner and the petitioner is not able to effectively deal with the subject property. The petitioner, therefore made a representation to the respondent on 24.09.2020 requesting the respondent to delete the entry made in the encumbrance certificate. Since this representation did not evoke any response, the present Writ Petition has been filed before this Court seeking appropriate directions.

4. Heard Mr.Vijay Shankar, learned counsel appearing for the petitioner and Mr.T.M.Pappiah, learned Special Govt. Pleader appearing for the respondent.

5. This Court has encountered several such pleas made by several bonafide purchasers who find that certain earlier entries that are made in the encumbrance certificate, comes in their way while dealing with the property. The Registering Authority has not been vested with any powers under the Registration Act to cancel any entry made in the Encumbrance Certificate. Therefore, these authorities also expressed their helplessness in considering the request made for deletion of the entry in the Encumbrance Certificate.

6. Therefore, this Court has passed several orders in cases of this nature after considering the facts of each case and clarifying the legal position in this regard. In the present case, there was a sale agreement that was registered on the file of the respondent as early as in the year 2008. This sale agreement did not have any binding effect on the Financial Institution which already had a right over the property by virtue of the mortgage executed in its favour. In the eye of law, this sale agreement will be treated as non est in so far as the Financial Institution is concerned. The law on this issue is well settled.

7. The recent Division Bench of this Court had an occasion to deal with such registration of agreement of sale and the

impact it will have on the original owner of the property to deal with such property. For proper appreciation, the relevant portions in the case of N. Ramayee Vs. The Sub-Registrar, Registration Department and Ors. reported in 2020 5 LW, Page 385 are extracted hereunder;

" 37. Accordingly, we answer the reference as follows: If an agreement for sale is registered in respect of immovable property, the same will not be a bar for the owner of the property to effect subsequent transfers in respect of the same property. The Registrar has no right to refuse to register the document, except the documents relating to immovable properties mentioned in Section 22-A of the Tamil Nadu Act and as contemplated under Rule 162 of the Registration Rules.

38. It is also brought to our notice about the new circular in No. 24011/C1/2020 dated 08.10.2020. It is the contention of the learned Additional Advocate General that the Registrar has power to regulate the registration in order to prevent fraud and hence, the Registrar is having powers under the Registration Act to regulate the registration and the right to refuse the document and that such power is available under Section 71 of the Registration Act. Such contention is not acceptable for the simple reason that the circular bars transfer of property on the ground that when a lease is already executed in respect of the property, without expiry of the lease, transfer cannot be permitted or without consent of lessee no W.P.No.674 of 2020 registration is permissible. Further, insisting a no objection from mortgagee before registration is also against the very substantive provision of law. If any property is sold with existing mortgage, the transferee steps into the shoes of mortgagor. He has the right to redeem the property by paying the mortgage money. Therefore in the name of regulating the registration, any circular which is in the nature of violating the substantive provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law. If the contention of learned Advocate General that without seeking declaration and cancellation of the agreement of sale, subsequent agreement or transaction cannot be registered, is accepted then such restriction, in fact, infringes the very Constitutional right of the citizen provided under Article 300 A of the Constitution.

39. We are of the view that except as provided in the Registration Act and any other statute, the Registrar has no power to refuse to register a document. Though the object of the Act is to prevent fraud, such occasion arises only where some private properties are notified under the Tamil Nadu Private Forest Act. In such case, sale of such property without W.P.No.674 of 2020 permission of the Collector of the District is void. Only when such notification is available in respect of any property, the Registrar can verify whether the sanction of the Collector is obtained or not. Similarly, whenever properties have been declared as forest land or elephant corridor, etc., and the notification is available with the Registrar, based on the above notification he can exercise power. Except the above, the Registrar has no power to refuse to register the document.

40. As already indicated, the purpose of registration is only to give a public notice. It is for the buyer or subsequent transferee to make reasonable enquiry. Doctrine of caveat emptor will also apply to every transfer. It is for them to verify the title of the property by making reasonable enquiry. At any event, subsequent transfer will always be subject to the rights already created. Therefore, it cannot be said that merely because agreement for sale is registered without obtaining decree of declaration that such agreement is void, subsequent transfer is prohibited and cannot be registered. We hold that as discussed in our judgement, Registrar has no right to refuse to register the subsequent document on the W.P.No.674 of 2020 basis that agreement of sale was already registered in respect of same property. Accordingly, the reference is answered. Post the writ petition in W.P.No.674 of 2020 before the learned single judge for disposal."

8. It is clear from the above that the Division Bench has categorically held that mere registration of an agreement of sale by itself is not a bar for the owner of the property to deal with his property. The Division Bench has also clarified that the Registration Department cannot rely upon such Registration of an agreement of sale and deny the right of the owner of the property to deal with his property.

9. In the present case, the agreement is of the year 2008. Even taking the extreme case that it is a valid agreement, it has to be enforced within a period of three years as per Article 54 of the Limitation Act. Thereafter it becomes an unenforceable agreement and virtually it becomes stale. The difficulty is that the respondents are not vested with power under the relevant enactment to delete any entry in the Encumbrance Certificate. Probably this power was not given to the Registering Authority since in some cases, it may amount to cancelling the very document itself. Therefore, in cases of this nature, the litigants will have to necessarily approach this Court and seek for a relief.

10. The above discussion made by this Court makes it therefore very clear that the entry made in the Encumbrance Certificate with regard to the agreement of sale dated 23.5.2008, has become non-est in the eye of law. Such entry that remains in the encumbrance certificate cannot be put against the petitioner who has purchased the property in an auction sale conducted by the Asset Re-construction Company under the SARFAESI Act. This is the legal position in so far as the right of the petitioner over the subject property is concerned.

11. Apart from the above clarification given by this Court, it is left open to the petitioner to present this order for registration before the respondent and the respondent can also register this order by virtue of which the earlier entry made at the time of registration of the agreement of sale automatically gets reversed. The petitioner is directed to submit a representation along with a certified copy of this order before the respondent. The respondent, on receipt of the same, shall register this order subject to the payment of the necessary stamp duty and registration fees.

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

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Msr

To

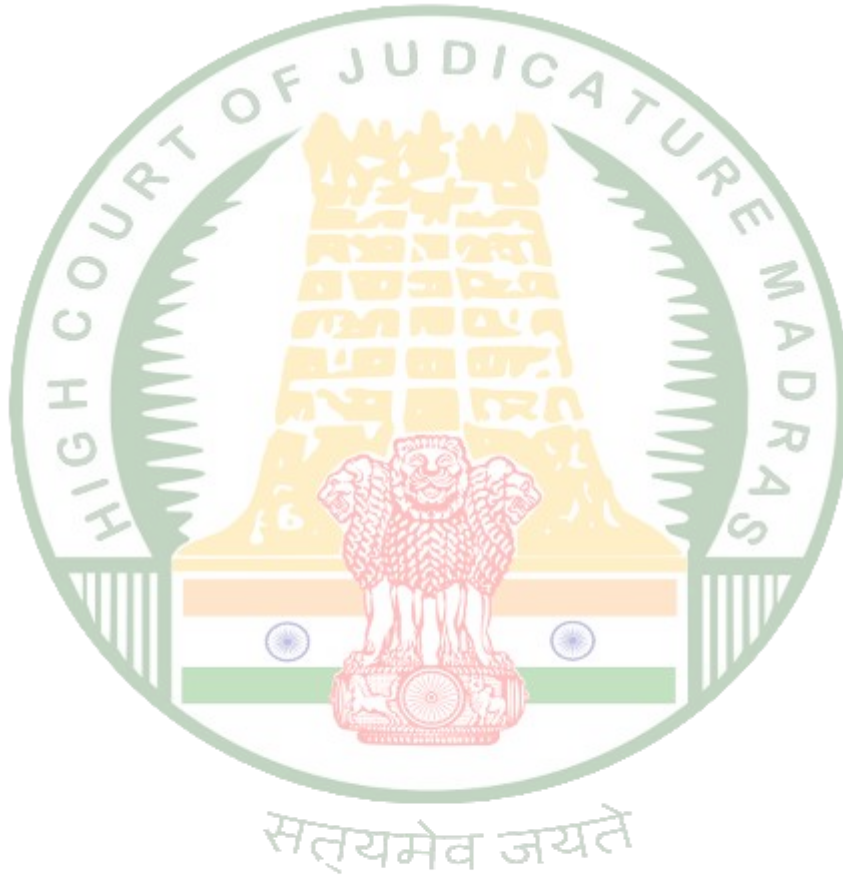
The Sub Registrar,
Suramangalam Sub Registrar Office,
Salem-5.

+1cc to the Government Pleader, S.R.No.40433

W.P.No.17713 of 2020

EV(CO)

CS/20/01/2021



WEB COPY