

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.7827 & 7828 of 2016

1.Ashok Chand

2.Ashokchand Bansali

...Petitioners in both WPs

-Vs-

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.

2.District Registrar (Admin IC),
Tirupur Registration District,
Tirupur District.

3.Office of Tirupur - II Joint Sub Registrar,
Tirupur Registration District, Tirupur.

4.Nallammal

5.Madhiyazhagan

6.Asset Reconstruction Company India Limited,
Rep by its Manager, Mr.Kailash Choudhary,
The Ruby, 10th Floor, No.29, Senapathi
Bapat Marg, Dadar (W), Mumbai - 400 028.

[R.6 is impleaded as per order dated 30.03.2016
in W.M.P.No.9411 & 9412 of 2016 in W.P.Nos.
7827 and 7828 of 2016]

...Respondents in both WPs

Writ Petitions filed under Article 226 of the
Constitution of India, for issuance of Writ of Certiorarified
Mandamus, calling for the records of the second respondent in
R.No.4683/B1/2015-1 dated 01.12.2015 pertaining to pending
Document Nos.127/2013 and 128/2013 and quash the same and direct
the respondents 1 to 3 to register the pending Document
P.Nos.127 & 128/2013.

For petitioner : Mr.Anirudh Krishnan
(in both the WPs)

For Respondent : Mr.P.P.Purushothaman
Government Advocate
(for R.1 to R.3)
Mr.C.S.K.Sathish (for R.4)
Mr.K.Moorthy,
Mr.P.Suresh Srinivasan
Mr.G.Prabhu
(for R.5)
Mr.V.V.Siva Kumar (for R.6)
(in both the WPs)

COMMON ORDER

These writ petitions have been filed challenging the order passed by the respondent refusing to register a sale deed presented for registration executed by the fourth respondent and her husband late T.Subramani in favour of the petitioners. The reason for refusing to register the document as mentioned by the Sub-Registrar as follows:

"A sale deed dated 23.12.2013 executed by T.Subramani in favour of Mr.Ashok Chand Bansali and Ashok Chand was presented for registration and was kept pending for production of original title deed and attachment raised orders to the attachment filed as L12/2013 & L13/2013 in this office and the facts are intimated to the parties. Later on, in obedience to the orders of the High Court Chennai in W.P.No.34639 of 2014, 5555 of 2015 and M.P.No.1 of 2015 in W.P.No.5555 of 2015 dated 13.07.2015, action was initiated to pass orders on the pending document No.128/2013. The parties in this office letter No.303/2015 dated 18.08.2015 were informed to produce the original title deed and attachment raised orders failing which the registration of pending document No.128/2013 will be refused. The reply dated 04.09.2015 was received from Tmt.Nallammal (Executant Subramaniam expired on 01.03.2014) and dated 04.09.2015 was received from Tvl.Ashok chadn Bhansali and Ashok Chand. But neither the original title deed nor attachment raised order was produced. The title deeds of the said properties are lying in Debt Recovery Tribunal Coimbatore. Registration of any deed when the court attachment order exists is opposed to General Law.

Hence, under the powers vested to the registering officer under Section 71 of the Registration Act 1908, Registration of the pending document No.128/2013 is refused under Rule 162A of the Registration Rules. Under Section 72 of the Registration Act.

2.The petitioners preferred an appeal before the District Registrar which has been rejected by order dated 01.12.2015 which is as follows;

"In the reference (2) cited above an appeal under Section 72 of Registration Act 1908 were made by purchasers to pass orders and Register the Pending Document No.128/2013 of Joint II Sub Registrar Office, Tirupur for which Refusal orders were passed in reference (1) cited above.

In the above said subject detailed enquiry was made in this office on 01.12.2015. During the enquiry, sellers and the purchasers were enquired. In the reference (3) cited above the sellers stated that they could not produce the Original Title Deed and attachment raised orders for L12/2013 and L13/2013 which are filed in Tirupur Joint II Sub Registrar Office.

Hence, the appeal for orders to register the above said document made by the purchasers in the reference (2) cited above is hereby refused.

3.The above order is impugned in this writ petition. Mr.Anirudh Krishnan, learned counsel appearing on behalf of the petitioners submitted that the reasons stated by the Sub-Registrar for refusing registration is by placing reliance on a circular issued by the Inspector General of Registration dated 25.04.2012 and such circular could not have been the basis for refusing registration. It is further submitted that the settled legal principle is that once a mortgage is always a mortgage and even if there is a mortgage created by the fourth respondent and her husband in favour of the sixth respondent/Bank, there is no impediment for the Sub-Registrar to register the sale deed. Furthermore, the learned counsel contended that nowhere in the Registration Act or the Rules framed thereunder, the Sub-Registrar can insist upon production of the original documents prior to registration in this regard. The learned counsel made reference to Section 71 of the Registration Act, 1908 and Rule 55 of Registration Rules. Reliance was also placed on the order passed by this Court in the case of Lakshmi Ammal Vs. Sub-Registrar, Villivakkam & another reported in (2015) SCC On-Line 5868. This decision was relied on to buttress the submission

that the circular dated 25.04.2012 relied on by the Sub-Registrar could not have been the basis for refusing the registration.

4. Heard Mr.P.Purushothaman, learned Government Advocate appearing on behalf of respondents 1 to 3, Mr.C.S.K.Sathish, learned counsel appearing on behalf of fourth respondent, Mr.K.Moorthy, Mr.P.Suresh Srinivasan & Mr.G.Prabhu, learned counsel appearing on behalf of the fifth respondent and Mr.V.V.Siva Kumar, learned counsel appearing on behalf of the sixth respondent.

5. First and foremost, it is to be noted that the reason for non-production of the original title deeds is not on account of the fact that it is not available but it is being held as security by the sixth respondent towards a loan transaction availed by the fourth respondent and her husband in respect of private limited company. The fourth respondent/husband Mr.T.Subramani (since deceased) who had executed a sale deed in favour of the writ petitioner on 23.12.2013 stated that the original documents were misplaced and in this regard obtained a non-traceability certificate from the concerned Sub-Inspector of Police. Therefore, it is clear that the petitioner/vendor T.Subramani had uttered falsehood and played fraud on the Department by placing Non-traceability certificate.

6. This Court is informed that the concerned Sub-Inspector of Police who had issued Non-traceability certificate has been placed under suspension and disciplinary proceedings has been initiated. That apart, the fifth respondent, who is none other than the son of the fourth respondent, all is not well within the family and the fifth respondent had filed suits against his father and mother (4th respondent). One of the suits being not to register the document namely the sale deed dated 23.12.2013 executed by his father in favour of the petitioners and the suits are pending.

7. That apart, criminal complaint has also been given by the fifth respondent son against his father and mother, the fourth respondent and the Advocate who had drafted the document and it is stated that the said criminal complaint has now been transferred to District Crime Branch and is being enquired into. Apart from all these aspects, the original documents are retained by the 6th respondent. Action has been initiated under the Provisions of the SARFAESI Act. The matter is pending before the Debt Recovery Tribunal. Therefore, in the interregnum, if the prayer sought for by the petitioners is acceded to, then it would be putting a premium on the fraud committed by the fourth

respondent.

8.The decision in the case of the Lakshmi Ammal will in no manner advance the case of the petitioner. In the said case, the Court noted that the Circular can only be a guideline but noting the facts therein, whether the mother of the writ petitioner wanted to execute the settlement deed in favour of her daughter settling upon her half undivided share in the house property. She took the decision because she was very aged and wanted to settle the property on her daughter. However, it appears that the other daughter was also the original documents and refusing to produce the same and her husband was settling her.

9.This led to a situation where the mother could not produce the original documents and therefore represented to the Sub-Registrar who referred to the Circular dated 25.04.2012 and refused to registration. When this was put to challenge, this Court taking note of earlier order in W.P.No.983 of 2013 dated 31.01.2013 allowed the writ petition stating that nowhere under the provisions of Section 71 of the Registration Act, the original documents/parent documents should be compulsorily produced for effective transfer of the property by way of sale. The Court noted that in the said case, there was no encumbrances on the property from the year 1987 till the date when the settlement deed was executed and presented for registration. Thus, in those facts and circumstances, the Court directed that refusing to register the sale deed was not proper and issued necessary directions. As mentioned, the said decision can in no manner help the case of the petitioner for special reasons, firstly the petitioner/vendor late T.Subramani attempted to play a fraud by producing a certificate from the Police, as if original title deeds are missing. The original title deeds are safely held by the 6th respondent and proceedings are initiated against the fourth respondent and on her late husband and a private limited company for recovery of loan amount. That apart, there have been several bogus transactions committed in the State and therefore the Registration Department after having adopted e-governance has made it mandatory that the parent document should be produced in original perused by the Sub-Registrar, scanned and uploaded and thereafter sale deeds are accepted for registration. This is to ensure that a fraud has not been committed, a property is not sold more than once etc.

10.In the instant case, the respondents however not refused registration for invalid reasons but they seek for production of the original documents and also raising the two attachments which have been effected on the property. Both of these, the petitioners could not comply with.

11.Thus, for the above reasons, there is no error in the orders passed by the respondent and the petitioners have not made any ground to interfere with the order impugned in the writ petitions accordingly, the writ petitions stand dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrm
To

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.

2.District Registrar (Admin IC),
Tirupur Registration District,
Tirupur District.

3.Office of Tirupur - II Joint Sub Registrar,
Tirupur Registration District, Tirupur.

+4cc's to Mr.K.Moorthy, Advocate SR.9949, 10977

+2cc to Mr.Anirudh Krishnan, Advocate SR.9888

+1cc to Mr.Chethan Sagar, Advocate SR.9757

+1cc to the Government Pleader SR.10841

W.P.Nos.7827 & 7828 of 2016

RR(CO)
CB(05/03/2020)

सत्यमेव जयते

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