

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.No.18710 of 2020

1.C.Govindasamy

No.3/20, Semmandam Palayam,
Sinniampalayam, Tiruppur,
Coimbatore - 638 103.

2.M/s.Housing Development Finance Corporation Ltd.,

Rep. by its authorized signatory
HDFC House - 29,
Kamaraj Road, Near Circuit House,
Coimbatore.

.....Petitioners

vs.

1.The Joint Sub-Registrar-II

Gobichettipalayam,
No.18, Old Hospital Road,
Gobichettipalayam - 638 452.

2.P.A.Kathirvel

No.4/944, Thilak Nagar Kullampalayam,
Gobichettipalayam,
Erode.

.....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 herein vide refusal check slip with refusal number RFL/Gobichettipalayam Joint II/21/2020 dated 02.11.2020 quash the same and consequently direct the 1st respondent to register the sale certificate dated 30.07.2020 issued by the 2nd petitioner in favour of the 1st petitioner Mr.C.Govindasamy.

For Petitioners	:	Ms.V.V.Uthra for Mr.K.J.Parthasarathy
For Respondents	:	Mr.T.M.Pappiah Special Government Pleader for R1

O R D E R

On consent given by either side, the main writ petition itself has been taken up for final hearing.

2. This writ petition has been filed challenging the impugned refusal check slips issued by the 1st respondent dated 02.11.2020 and for consequential direction to the 1st respondent to register the sale certificate dated 30.07.2020 issued in favour of the 1st petitioner by the 2nd petitioner.

3. The case of the petitioners is that the 2nd respondent was sanctioned a Housing Loan by the 2nd petitioner and he created an equitable mortgage in favour of the 2nd petitioner on 17.04.2017 and this was also registered as Document No.665 of 2017 before the 1st respondent. The borrower defaulted in payment of the loan and the loan ultimately was classified as 'NPA' on 31.08.2018.

4. The 2nd petitioner initiated proceedings under SARFAESI Act and ultimately, the mortgaged property was brought for sale through private treaty and the 1st petitioner paid a sum of Rs.35,10,000/- and the sale was confirmed in his favour. A sale certificate came to be issued in favour of the 1st petitioner by the 2nd petitioner on 30.07.2020.

5. When the above sale certificate was sought to be registered before the 1st respondent, the same was refused to be registered on the ground that the subject property was subjected to an order of attachment by the Sub-Court, Gopichettipalayam in I.A.No.27 of 2018 in O.S.No.11 of 2018. Aggrieved by the same, the present writ petition has been filed before this Court.

6. Heard Ms.V.V.Uthra, learned counsel appearing on behalf of petitioners and Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of first respondent.

7. The issue involved in the present writ petition is squarely covered by earlier order passed by this Court in W.P.No.16523 of 2020 dated 07.12.2020 and the relevant portions of 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 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, 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 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 SubRegistrar, 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.

12. This view has been consistently taken by this Court and several orders have been passed in this regard. In the considered view of this Court, the benefit of this order can also be extended to the petitioners.'

8. It is clear from the above that the order of attachment before judgment passed by the concerned Civil Court, will not have any binding effect on the 2nd petitioner and the above order will squarely apply to the facts of the present case.

9. In the result, the impugned refusal check slips issued by the 1st respondent is hereby quashed and there shall be a direction to the 1st respondent to entertain the sale certificate dated 30.07.2020 and the same shall be registered, if it is otherwise in order and subject to the condition that necessary stamp duty and registration fee is paid. The documents shall be returned after the same is registered.

10. This Writ Petition is allowed with the above directions. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

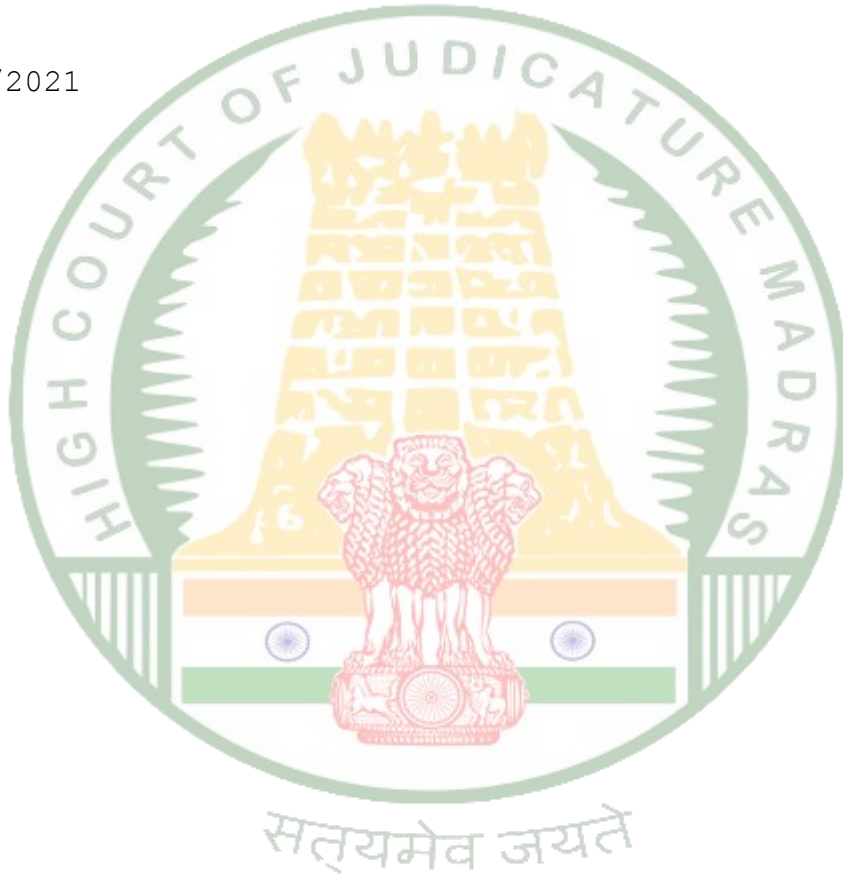
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To
The Joint Sub-Registrar-II
Gobichettipalayam,
No.18, Old Hospital Road,
Gobichettipalayam - 638 452.

+2cc to Mr.K.J.Parthasarathy, Advocate, SR41167
+1cc to The Government Pleader, SR41417

W.P.No.18710 of 2020

CO (SR)
BDL/07/01/2021



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