

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.29932 of 2019
and WMP.No.31200 of 2019

V. Manjunathan
S/o. B.V.Varadharaj Chetty. .. Petitioner

Vs

1. The Sub Registrar,
Bargur Sub Registrar Office,
Bargur Town,
Krishagiri District.
2. A. Venkatappan,
S/o. Alagappan Chettiayar.
3. T.Ramalingam .. Respondents

[R2 and R2 were impleaded as per order dated 05.11.2019 made in WMP.No.31200 of 2019 in WP No.29932 of 2019]

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent dated 04.10.2019 made in RFL/Bargur/48/2019 and to quash the same consequently direct the respondent to remove the Encumbrance relating to the attachment of District Munsif Court, Krishnagiri Document No.11 of 1993 dated 07.09.1993 by registering the sale deed of the petitioner dated 03.10.2019 in respect of the property measuring an extent of 2.75 acres comprised in Survey No.3/2, situate at Bargur Village and Taluk, Krishnagiri District.

For Petitioner : Mr. C. Prabakaran
For Respondents : Mr.T.M.Pappiah
Special Government Pleader

O R D E R

This writ petition has been filed challenging the refusal slip issued by the respondent, wherein the sale deed presented by the petitioner for registration was returned on the ground

that encumbrance certificate reflects an order of attachment passed by a Civil Court.

2. The case of the petitioner is that he has purchased the subject property by way of a register document dated 21.04.1993. The petitioner wanted to deal with the property and hence he executed a sale deed dated 03.10.2019 in favour of one Packiya Kumar. When this sale deed was presented for registration, the same was returned with a refusal slip stating that an order of attachment has been passed by a competent court and it is reflect in the encumbrance certificate. Aggrieved by the same, the present writ petition has been filed before this Court.

3. The learned counsel for the petitioner submitted that the petitioner had purchased the property even before the alleged order of attachment passed on 07.09.1993. The learned counsel submitted that the order of attachment was passed in I.A. No.11 of 1993, which was filed before the District Munsif Court, Krishnagiri in O.S.No. 319 of 1993. It was further submitted that an ex-parte decree was passed on 28.10.1993 and till date it has not been put to execution and therefore the decree itself has become in executable due to lapse of 12 years from the date of passing of the decree. Therefore, the learned counsel submitted that the order of Attachment Before Judgment will also automatically lapse. Hence, the respondents must be directed to register the sale deed presented by the petitioner.

4. Per contra, Mr.T.M.Pappiah, learned Special Government Pleader submitted that the respondents cannot disobey the order of ABJ passed by a competent Civil Court. The learned counsel further submitted that the petitioner must go before the concerned Court and get the attachment lifted and thereafter the document can be presented for registration. The learned Special Government Pleader submitted that there is under valuation of the property and that is one more reason why the document was returned. Therefore, the learned counsel submitted that there is no ground to interfere with the refusal slip issued by the respondents.

5. Where a competent Civil Court passes an order of ABJ and the same is also effected and registered before the authority, the registering authority cannot overlook the said order and register any document. Therefore as rightly contended by the learned Special Government Pleader, the respondent can only inform the petitioner to get this order of attachment lifted/raised before presenting the document for registration.

6. It was contended by the learned counsel for the petitioner that an ex-parte decree was passed on 28.10.1993 and thereafter the decree was not put to execution. The learned

counsel therefore submitted that the decree becomes in executable by virtue of Article 136, which specifies a period of limitation of 12 years from the time when the decree becomes enforceable. If the submission made by the learned counsel for the petitioner is factually correct, he is right in saying that the decree has become in executable. However, the respondent require some material to satisfy himself that the decree was not put to execution.

7. In view of the above, there shall be a direction to the petitioner to verify before the concerned Court as to whether any execution petition was filed after the ex-parte decree was passed on 28.10.1993. If no execution petition was filed, the petitioner shall submit a sworn affidavit before the respondent clearly explaining the fact that the decree was not put to execution and therefore it is barred by limitation. This affidavit shall be submitted along with the documents. It goes without saying that the documents will be presented with the necessary stamp duty and registration charges. On receipt of the same, the respondents is directed to register the documents, if it is otherwise in order and release the same to the petitioner. The affidavit filed by the petitioner shall be treated as a part of the document and shall be preserved in the office of the respondent.

This writ petition is disposed of with the above direction. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

To

1. The Sub Registrar,
Bargur Sub Registrar Office,
Bargur Town,
Krishagiri District.

+1cc to Mr.C.Prabakar, Advocate, S.R.No.25911

W.P.No.29932 of 2019
and WMP.No.31200 of 2019

SKS (CO)
RV(27/08/2020)