

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.33671 of 2019
and
W.M.P.No.34132 of 2019

M.M.Sanker

...Petitioner

-Vs-

1.The Commissioner of Police,
Greater Chennai Police,
No.132, Office Building,
EVK Sampath Road,
Vepery, Chennai - 600 007.

2. The Assistant Commissioner of Police,
CCB in charge of Bank Fraud Investigation Wing, Team V,
Greater Chennai Police,
No.132, Office Building,
EVK Sampath Road,
Vepery, Chennai - 600 007.

3. The Inspector of Police,
CCB in charge of Bank Fraud Investigation Wing, Team V,
Greater Chennai Police,
No.132, Office Building,
EVK Sampath Road,
Vepery, Chennai-600 007.

4. S.J.Senthil Kumar

5. Mr.Ashok
Senior Manager,
Axis Bank Limited,
Fraud Cell,
Retail Lending and Banking,
No.2 United India Colony,
Kodambakkam,
Chennai 600 024.

... Respondents

(R5-Impleaded as per order dated 02.01.2020
made in W.M.P.No. 35126 of 2019
in W.P.No.33671 of 2019)

Prayer: Writ petition filed under Article 226 of the Constitution of India, forbearing the respondents 2 and 3 herein from in any manner by themselves or through their subordinates or agents or men from interfering with the peaceful possession and enjoyment and dispossessing the petitioner from the property situated at Plot No.6 and 7A & 7B, Door NO.7, Chithirai Street, India Cements Home Town, Noombal 600077 measuring an extent of Land 5928.5 Sq.Ft. with Building 4252 Sq.Ft. without following the due process of law which forms part of and subject matter of the Mortgage deed and General Power of Attorney dated 12.06.2018.

For Petitioner : Mr.N.S.Thanu Madhan

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor
for R1 to R3.
Mr.M.R.Umavijayan
for R5.

ORDER

The Writ Petition has been filed for issuing a writ of mandamus forbearing the respondents 2 and 3 herein, from in any manner by themselves or through their subordinates or agents or men from interfering with the peaceful possession and enjoyment and dispossessing the petitioner from the property situated at plot No.6 and 7 A & 7 B, Door No.7, Chithirai Street, India Cements Home Town, Noombal 600077 measuring an extent of land 5928.5 Sq.ft. with building 4252 Sq.ft. without following the due process of law which forms part of and subject matter of the mortgage deed and General Power of Attorney dated 12.06.2018.

2. The learned Additional Public Prosecutor submitted that on the complaint lodged by the Axis Bank Limited the 5th respondent herein, in respect of the same property FIR has been registered against the 4th respondent & others in Cr.No.190/2019 for the offences under Sections 406, 420, 34 & 109 of IPC. The petitioner is not the owner of the said property. Originally, the 4th respondent and one sinimal John are the owners of the disputed property. It was mortgaged with ICICI Bank and availed loan to the tune of Rs.2,54,00,000/- & Rs.82,00,000/-. Thereafter, the 4th respondent and the said sinimal John approached the 5th respondent to avail loan to close the earlier mortgage with the ICICI Bank by mortgaging the property with the 5th respondent and also by depositing the title deeds. Accordingly, the 5th respondent disbursed loan to the tune of Rs.2,57,64,888/- and Rs.84,83,166/- and closed the loan with ICICI Bank. After receipt of original title deeds from the ICICI Bank. They failed to deposit with the 4th respondent and executed power of attorney deed in

favour of one R.Madhupriya, who is none other than wife of the petitioner herein, in turn she created mortgage deed in favour of one Yelamarthi Ashwin, who is a partner of the petitioner in their finance for a sum of Rs.1.5 crores. Thereby all the accused colluded together for unlawful gains by defrauding the 5th respondent and cheated to the tune of Rs.3.30 crores.

3. On perusal of FIR in Cr.No.190/2019 on the file of the 3rd respondent, the petitioner's wife and his partner are the accused 3 & 4. The petitioner was also called for enquiry in this regard and the investigation is pending. Now, the petitioner has come forward with this writ petition with the in proper, baleful and illegal prayer against that too police personals.

4. Therefore, the writ petition itself is not maintainable under Article 226 of Constitution of India. Admittedly, there are two mortgage in respect of the disputed property with the 5th respondent and partner of the petitioner herein. Therefore, if at all any grievance over the mortgage, the affected party has to approach the civil court for appropriate relief. That apart, the recipient of the mortgage of the power of attorney holder failed to approach this Court. As such, this petition has been filed only to escape from clutches of law, nothing else.

5. In view of above, this petition is devoid of merits and also not maintainable. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
सत्यमेव जयते
Assistant Registrar

//True copy//

Sub Assistant Registrar

kmm

To

1.The Commissioner of Police,
Greater Chennai Police,
No.132, Office Building,
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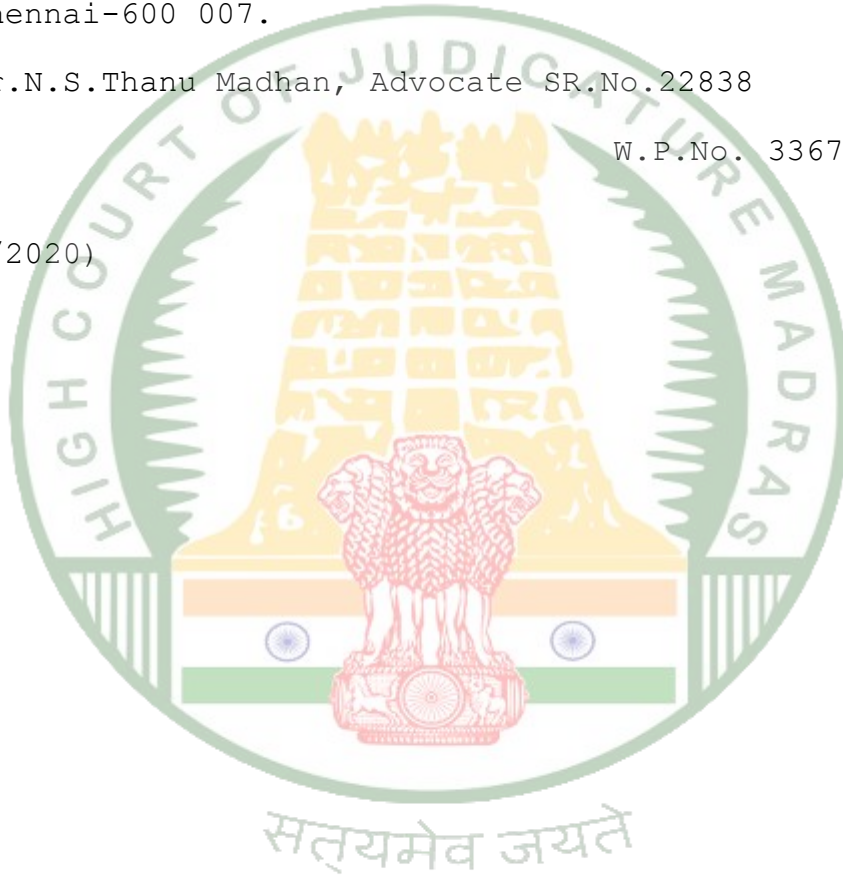
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+2cc to Mr.N.S.Thanu Madhan, Advocate SR.No.22838

W.P.No. 33671 of 2019

MP (CO)
GMY (27/07/2020)



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