



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE **S. VAIDYANATHAN**

W.P. (MD)No.15209 of 2020

WEB COPY

S.Sathiya

... Petitioner

vs

1.The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate,
Pattinapakkam,
Chennai- 600028.

2.The Sub Registrar,
Thirupparankundram,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining the impugned refusal check slip in RFL/Thirupparankundram/37/2020 dated 05.10.2020 passed by the second respondent and quash the same and consequentially directing him to register the sale agreement dated 28.09.2020 entered into between the petitioner and Paramahamsan in respect of property bearing Door No.26B, Seenivasa Nagar, Thirupparankundram, Madurai Town and District within a time frame that may be fixed by this Court.

For Petitioner

: Mr.J.Barathan

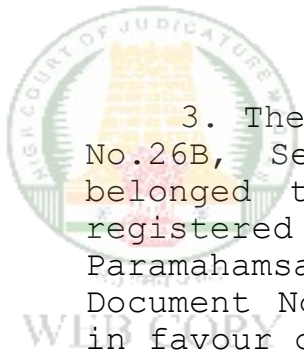
For Respondents

: Mr.M.Murugan
Government Advocate

ORDER

This writ petition is filed, seeking issuance of Writ of Certiorarified Mandamus, to call for the records pertaining the impugned refusal check slip in RFL/Thirupparankundram/37/2020, dated 05.10.2020 passed by the second respondent and quash the same and consequentially directing him to register the sale agreement dated 28.09.2020 entered into between the petitioner and Paramahamsan in respect of property bearing Door No.26B, Seenivasa Nagar, Thirupparankundram, Madurai Town and District within a time frame.

2. Heard the learned Counsel appearing for the petitioner and Mr.M.Murugan, learned Government Advocate, who took notice for the respondents. By consent of both parties, the Writ Petition is disposed of at the admission stage itself.

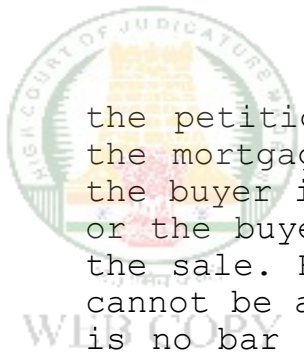


3. The case of the petitioner is that the property bearing Door No.26B, Seenivasa Nagar, Thirupparankundram, Madurai, originally belonged to one Ganeshkumar under sale deed dated 06.08.2015 registered as Document No.2598 of 2015. he sold the same to one Paramahamsan through sale deed dated 30.10.2018 registered as Document No.4038 of 2018. The said Paramahamsan mortgaged the same in favour of DCB Bank Limited through memorandum of deposit of title deeds dated 31.10.2018 registered as Document No.4060 of 2018. The original sale deed dated 30.10.2018 executed by the said Ganeshkumar in favour of Paramahamsan and all the other documents had been deposited by him are with DCB Bank Limited. Now, the petitioner entered into sale agreement dated 28.09.2020 with Paramahamsan for purchasing the subject property. She has the knowledge about the mortgage created by Paramahamsan in favour of the DCB Bank. She presented the sale agreement, dated 28.09.2020 before the Sub Registrar Office, Thirupparankundram. But the Sub Registrar has rejected the request of registering the sale agreement on the ground that the original sale deed dated 30.10.2018 has not been produced. According to the petitioner, the original sale deed has been mortgaged with the Bank by the seller and that the petitioner being a buyer of the property has narrated that certain documents have been mortgaged with the Bank and certified copies of the same have been issued by the Sub Registrar Office, Thirupparankundram.

4. Though the necessary documents are in the custody of the Bank as collateral security, any person will be entitled to buy the mortgaged property and that the conditions of the mortgage has got to be cleared by the subsequent purchaser could be the only criteria. Therefore, there is no prohibition for buying the mortgaged property and the Sub Registrar cannot refuse to register the sale agreement on that score for demanding the original sale deed, which has been mortgaged with the Bank.

5. Mr.M.Murugan, learned Government Advocate appearing for the respondents would submit that even though there is a bar for the buyer to buy the mortgaged property, but as according to the petitioner the original sale deed of the mortgaged property is with the Bank, there is no bar for the buyer to get a letter from the Bank to the effect that there is a mortgage and that the documents are with them and there is no need to even to get no objection with the Bank. Further, to ascertain the fact that the documents are with the Bank, a letter is sufficient for the registration to take note of the mortgage and register the documents. Hence, he submit that on production of such letter, the sale agreement could be registered.

6. It is not in dispute that the original seller has mortgaged the property with the DCB Bank Limited and that there was a deposit of title deeds executed by the seller in favour of the DCB Bank Limited on 31.10.2008 and it is duly certified by the Sub Registrar Office as an agreement between the seller Paramahamsan and



the petitioner herein. When there is no prohibition or bar to buy the mortgaged property, which has to be produced by the seller and the buyer is at risk in buying the property and it is for the seller or the buyer to clear the mortgage either before the sale or after the sale. But demanding of the original documents by the Registrar cannot be accepted. Hence, this Court is of the view that when there is no bar for the person to buy the mortgaged property, that there is a documentary evidence with the Sub Registrar office that the title deeds are with the Bank, demanding original document is not at all required. The letter, if any, going to be given by the Bank is not going to be helpful as the communication of the Sub Registrar office. It is very clear that the title deeds are with the Bank. Based on the same, the documents can be registered. Hence, I am of the view that the impugned order is not correct and liable to be set aside.

7. Accordingly, this writ petition stands allowed and the impugned order is set aside. No Costs. However, the petitioner shall resubmit the documents and the documents shall be registered based on the memorandum of Deposit of Title Deeds executed by the DCB Bank on 31.10.2018 and demand of original title deeds is not at all required when it is with the Bank.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

To

1.The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate,
Pattinapakkam, Chennai- 600028.

2.The Sub Registrar,
Thirupparankundram,
Madurai.

+1cc to Mr.T.R.Jeyapalam, Advocate, SR.No.21059.

W.P (MD) No.15209 of 2020
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SS (CO)

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