IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No.7947 of 2018
and W.M.P.No.9901 of 2018

Dr.Abilasha ... Petitioner

Vs.

1.District Registrar (Admin),
(A.I.G.cadre),
Chennai Central,
Chennai - 600 014.

2.Joint 2 Sub Registrar,
(D.R. Cadre),
Thousand Lights,
Chennai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in Proceedings No.8490/B1/2017 dated 20.10.2017 and to quash the same as illegal, incompetent and without jurisdiction and to further direct the 2nd respondent to register the document presented to him for registration on 02.06.2017 being a Settlement Deed in favour of the petitioner's mother Tmr.NaliniSwaraj.

For Petitioner : Mr.V.Raghavachari
For Respondents : Mr.B.Kannan for R1 & R2
Government Advocate

O R D E R

This writ petition has been filed for the issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in Proceedings No.8490/B1/2017 dated 20.10.2017 and to quash the same as illegal, incompetent and without jurisdiction and to further direct the 2nd respondent to register the document presented to him for registration on 02.06.2017 being a Settlement Deed in favour of the petitioner's mother Tmr.NaliniSwaraj.

2.Brief facts that are necessary for the disposal of the Writ Petition are as follows:

The petitioner along with his father purchased a property on 08.05.2015. It is admitted by the petitioner that the said property was mortgaged by the petitioner in favour of the Central Bank of India. A loan was obtained on 30.12.2015 and subsequently on 29.12.2016. The title deed was deposited with the bank. Thereafter, the petitioner executed a settlement deed in favour of his mother on 02.06.2017 and the said settlement deed was presented for registration. However, the document was returned unregistered with a cheque slip dated 06.06.2015 impugned in the writ petition.

3.The Joint Sub-Registrar by the impugned order dated 06.06.2017 returned the document on the ground that the settlement deed can be registered only if the petitioner gets a letter from the Bank to the effect that original documents are deposited with the bank along with a No Objection Certificate from the bank.

4.Aggrieved by the order passed by the Joint Sub Registrar dated 06.06.2017, the petitioner preferred an appeal before the District Registrar. The District Registrar dismissed the appeal based on a circular dated 25.04.2012. The extracted portion of the circular reads as follows:

> In respect of deeds involving transfer of immovable property, such as Sale, Gift, Settlement, Exchange or creating charge over the property such as Mortgage or Power of Attorney, the registering Officer should insist presentation of previous original deed/deeds by which the executants acquired right over the said property before registering the document and then verify the previous documents to satisfy himself that the executants have right over the property.

5.After referring to the circular issued by the Inspector General of Registration, the first respondent dismissed the appeal by stating that the order of Joint Sub-Registrar directing the petitioner to present the settlement deed with the No Objection Certificate from the bank concerned conforms with the circular issued by the Inspector General of Registration.

6.First of all circular relied upon by the respondent does not indicate that a mortgagor before executing a settlement deed needs to get a No Objection Certificate from the bank concerned. It is an admitted fact that the mortgage was created in this case by deposit of title deeds.

7.Every mortgagor of an equitable mortgage by deposit of title deed is required to be registered as per the amendment as far as the State of Tamil Nadu is concerned. Therefore, no certificate is required from mortgagor to get a certificate from the bank with regard to the deposit of the title deed with the bank. Similarly, the circular nowhere indicate that a mortgagor should get a No Objection Certificate from the bank for executing a settlement deed. No Objection Certificate or letter from the concerned bank for executing a settlement deed is not required by any statute. Every mortgagor has got the right of equity of redemption and that the said right is transferable and there is no statutory bar for a person or a mortgagor to deal with the property subject to the mortgage. The right of mortgagor is not affected by this settlement. In the present case, the petitioner himself has disclosed the mortgage that was executed by the petitioner indicating that the property is mortgaged to the bank. The petitioner's mother was asked to redeem the mortgage with the bank.

8.In such circumstances, this not a case where the respondents may also doubt the bonafides of the petitioner in executing the settlement deed. The impugned order is therefore illegal and uncalled for having regard to the admitted facts.

9.As a result, this writ petition is allowed. The second respondent is directed to register a document as no other reason is stated by the second respondent for refusing registration or returning the settlement deed. This exercise shall be undertaken by the second respondent within one week from the date of the presentation of the settlement deed by the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.District Registrar (Admin),
(A.I.G.cadre),
Chennai Central,
Chennai - 600 014.

2.Joint 2 Sub Registrar,
(D.R. Cadre),
Thousand Lights,
Chennai.

+1cc to M/s.V.Raghavachari, Advocate Sr.18571
+1cc to Government Sr.18635

W.P.No.7947 of 2018

PMK(CO)
RPI 04/05/2021