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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 21.09.2021

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.9106 of 2015 and
M.P.No.1 of 2015

The Authorised Officer /
Assistant General Manager
Corporation Bank,
Tiruppur Branch,
300/1 Mangalam Road,
Tiruppur 641 604.

... Petitioner

Vs.

The Sub Registrar
Office of the Registration
Palladam, Tiruppur District.

... Respondent

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the check slip No.01/2015 on the file of Sub Registrar, Palladam, Tiruppur District and quash the same as illegal, Arbitrary and without jurisdiction and further direct the respondent to register the Sale Certificate dated 31.12.2014 issued by the petitioner in favour of M/s.Knit Wear Private Limited.

For Petitioner : Mr.G.Senthil Kumar

For Respondent : Mr.C.Kathiravan
Government Advocate

ORDER

The petitioner is the Authorised Officer/Assistant General Manager, Corporation Bank.

2. The writ is filed to quash the check slip No.01/2015



on the file of the Sub Registrar, Palladam, Tiruppur District and to direct the respondent to register the Sale Certificate dated 31.12.2014.

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3. The petitioner states that one M/s.Fabric Care, a Partnership Firm availed Over Draft facilities of Rs.12 lakhs and term loan of Rs.35.96 lakhs from the petitioner Bank during 2003. The partners have given personal guarantee to secure the loan, besides that they have extended the securities of the properties.

4. The grievances of the petitioner is that they are initiated action to recover the loan dues from the defaulter Partnership Firm and also against the Partners of the Firm. The properties given by way of security were auctioned and the Recover Officer issued a Sale Certificate in favour of the third party purchasers of the properties by way of auction. The respondent Sub Registrar not registered the Sale Certificate to validate the same and confer title on the auction purchasers. The Check Slip No.01/2015 was issued stating that the subject property was registered by way of Sale Deed by one Tmt.Jayanthi, General Power of Holder in favour of one K.Ganesan. In view of the fact that the subject property was already sold by the Power Holder of the Partner in favour of the third party, the Sub Registrar gave an opinion that the petitioner Bank has no valid title and therefore, the Sale Certificate cannot be registered.

5. The Sub Registrar has to go by the documents supported by the parties for registration. Any document when a person claims to be owner of the property and as per the verification, the Sub Registrar finds that some other person is the owner of the property, then a civil dispute arises and such dispute is to be resolved only after adjudication. If at all any registration is made fraudulently or otherwise, then the person claiming to be the owner of the property has to initiate appropriate action for declaring such fraudulent registration as null and void and only thereafter the document shall be registered. Contrary, the Sub Registrar cannot register when there is a dispute is established. In the present case, the Sub Registrar found that the petitioner Bank is not having any right to register the Sale Certificate as the said property was already sold by one of the Partner through his Power Holder in favour of third person viz., Thiru.K.Ganesan. Thus, the said document is to be nullified and only thereafter the Bank will be entitled to proceed for registration.



6. No doubt, under the SARFAESI Act, the Bank holds first charge in respect of mortgaged properties. If the property was sold prior to the mortgage or during the existence of the mortgage are the disputed facts, such disputed facts cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India. Thus, the petitioner Bank has to approach the competent Civil Court of law or the competent authorities of the Registration Department for cancellation of the fraudulent Sale Deed in the manner known to law. This being the fact is established. The petitioner is at liberty to initiate appropriate action for the redressal of their grievances and the impugned order passed by the respondent as it cannot be held as invalid since the check slip was issued on the ground that the petitioner has no right to register the Sale Certificate in view of the sale already executed by some other person in respect of the subject property. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Sub Registrar
Office of the Registration
Palladam, Tiruppur District.

+1cc to Mr.S.Sethuraman, Advocate, S.R.No.49107

+1cc to the Government Pleader, S.R.No.49008

W.P.No.9106 of 2015

SS(CO)
SB(13/10/2021)