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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No. 13470 of 2019

R.Sathiya

..Petitioner

Versus

1.The District Registrar,
District Registrar Office,
Salem District.

2.The Sub Registrar,
Sub Registrar Office,
Attur Town and Taluk,
Salem District.

3.M. Seethapathi ... Respondents
(R3 Impleaded vide court order dated 17/07/2019
in WMP 20468/2019)

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 2nd respondent herein to register the Doc.No.85/18 on the file of the 2nd respondent in favour of the petitioner in accordance with law within time frame fixed by this Court .

For Petitioner : Mr.A.S. Ragul Adhithya
For Mrs.P.T.Ramadevi

For Respondents : Mr.Yogesh Kannadasa (For RR1&2)
Government Advocate

: Mr.R. Neelakandan (For R3)

O R D E R

Heard Mr.A.S. Ragul Adhithya, learned counsel appearing for the petitioner, Mr.Yogesh Kannadasan learned Government Advocate appearing on behalf of the first and second respondents and Mr.R.Neelakandan, learned counsel appearing for the third respondent.

2. The petitioner has presented the Document No.85/18 before



the second respondent to register the said document, but, he was refused to register the same bearing Receipt No.12162/2018, dated 31.10.2018 due to some litigation in connection with the aforesaid properties before the District Munsif Court, Attur in O.S.No.26/2016 and an interim injunction has also been granted in I.A.No.111/2016. Hence this petition.

3. The issue raised in this writ petition is squarely covered by the earlier decision passed by this Court wherein an identical issue was considered. At this stage, it will be useful to refer the operative portion of the said order passed by this Court dated 01.09.2014 in W.P.(MD) No.14388 of 2014:

"4. Section 71 of the Registration Act, 1908 deals with reasons for refusal to register which has to be recorded. In terms of Sub Section (1) of Section 71, every Sub Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his Sub District, shall make an order of refusal and record his reasons for such order in his Book No.2 and endorse the words 'registration refused' on the document, and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded. In terms of Sub Section (2), no registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

5. In such circumstances, merely because there is an order of attachment passed by a Civil Court, the same cannot be a ground to refuse to register the Memorandum of Deposit of Title Deeds. If any deposit of title deeds is created in respect of the said property pursuant to the right acquired by the petitioner, vide Settlement deed, dated 04.07.2011, it is always subject to further orders to be passed by the Civil Court. The petitioner's case is that she acquired title by way of settlement deed dated 04.07.2011, much prior to the order of attachment. Further, the learned counsel appearing for the petitioner placed reliance on Order 38, Rule 10 CPC stating that attachment before



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Judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree. The lending bank namely, Canara Bank, Vadamadurai if satisfies with the title of the petitioner over the property, can request the Registrar to register the document. In such circumstances, merely because an order has been passed by the Civil Court effecting attachment, cannot be a bar for entertaining a document for registration. Hence, the reasons assigned by the respondent refusing to register, vide his memo, dated 25.07.2014, is not in accordance with law beyond the scope of Section 71 of the Act.

6. For the above reasons, the writ petition is allowed and the respondent is directed to accept the Memorandum of Deposit of Title Deeds dated 24.07.2014 and register the same within a period of four weeks from the date of receipt of a copy of this order. It is made clear that mere registration of the Memorandum of Deposit of Title Deeds will not in any manner affect any order of attachment, which was already effected and placed in the Encumbrance Certificate. No costs."

4. In the light of the above, the second respondent is hereby directed to register the Document No.85/18 cited supra, if there is no litigation pending in respect of Doc.No.85/18 within a period of eight weeks from the date of receipt of a copy of this order.

5. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msm



To

1. The District Registrar,
District Registrar Office,
Salem District.

2. The Sub Registrar,
Sub Registrar Office,
Attur Town and Taluk,
Salem District.

+1cc to Mrs.P.T.Ramadevi, Advocate, S.R.No.55614
+1cc to the Government Pleader, S.R.No.56672

W.P.No. 13470 of 2019

KSM(CO)
CT 01/12/2021