IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.17229 of 2021
and
W.M.P.Nos.18238 & 18239 of 2021

P.Muthukaruppan ...Petitioner

Vs

1. The District Registrar,
   Office of the District Registrar,
   Government of Puducherry,
   Puducherry.

2. The Sub-Registrar,
   Office of the Sub-Registrar,
   Registration Department,
   Government of Puducherry,
   Saram, Puducherry. ...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to impugned orders (i) No.15221/RD/SRO(V)/REFUSAL/2021 dated 16.02.2021 passed by the second respondent namely the Sub-Registrar, Saram, Puducherry and consequential order vide (ii) No.1-1/RD/DRO/Pa/2021/354 dated 12.04.2021 passed by the first respondent namely the District Registrar, Registration Department, Government of Puducherry on the Statutory Appeal preferred by the petitioner under Section 72 of the Registration Act, 1908 and consequently direct the respondents to register the Release Deed dated 15.02.2021 presented by the petitioner for registration.

For Petitioner : Mr.Prakash Adiapadam

For Respondents: Mr.G.Djerany
Government Advocate (Pondicherry)

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, calling for the records relating to impugned orders (i) No.15221/RD/SRO(V)/REFUSAL/2021 dated

16.02.2021 passed by the second respondent viz., the Sub-Registrar, Saram, Puducherry and consequential order vide (ii) No.1-1/RD/DRO/Pa/2021/354 dated 12.04.2021 passed by the first respondent viz.,the District Registrar, Registration Department, Government of Puducherry on the Statutory Appeal preferred by the petitioner under Section 72 of the Registration Act, 1908 and consequently direct the respondents to register the Release Deed dated 15.02.2021 presented by the petitioner for registration.

2. Heard, Mr.Prakash Adiapadam, learned counsel appearing for the petitioner and Mr.G.Djerany, learned Government Advocate (Pondicherry) appearing for the respondents.

3.The petitioner and his brother jointly purchased the property comprised in Town Survey No. 4 & 5 , R.S.No. 239 pt, bearing Patta No.680, situated at Puducherry Municipal Commune Panchayat, Village No.40, Jawaharlal Nehru Street, Old Door No.53B/53A, New Door No.153 admeasuring 773 sq.ft. by a registered sale deed dated 21.10.1992. On 07.08.2014, the Tax Recovery Officer, Puducherry passed an order of attachment under Rule 48 of the Second Schedule to the Income Tax Act, 1961, whereby attached the said property for non payment of tax for a sum of Rs.1,89,35,000/- in pursuant to the certificate Nos.TSC 600 to 665 dated 20.03.2013 and interest payable under Section 220(2) of the Income Tax Act, 1961 and thereby prohibiting and restraining them from transferring or creating charges over the property.

4. While being so, in the year 2021, his brother intended to release his half share over the property in favour of the petitioner. Accordingly, his brother executed a Release Deed dated 15.02.2021 and it was presented for registration on 16.02.2021. They also paid necessary registration charges and stamp duty. However, the second respondent passed an impugned order dated 16.02.2021 vide No.15221/RD/SRO(V)/REFUSAL/2021, whereby refused to register the document on the ground that he has received order of attachment from the Income Tax Recovery Officer, Puducherry. Aggrieved by the same, the petitioner preferred an appeal before the first respondent. However, it was returned by an order dated 12.04.2021 for the reason that the same has not been filed within the time limit provided under Section 72 of the Registration Act, 1908.

5. The learned counsel for the petitioner submitted that in the case of S.Praveen Bohra Vs. Joint-I Sub Registrar, Coimbatore reported in 2016 3 CTC 493, this Court held that "order of attachment cannot be a bar to register the document and any document presented for registration pending the order of attachment is void only as against the claims enforceable under

the order of said attachment and not in respect of other claims". Further, the second respondent exercised his power conferred under Section 71 of the Registration Act, 1908 does not empower the Sub Registrar to refuse to register the document on the ground that there is an order of attachment either by Civil Court/Tribunal/Income Tax Department.He further submitted that the Hon'ble Supreme Court of India also passed an order in Suo Motu Writ Petition (Civil) No.3 of 2020 had extended the period of limitation for any suit, appeal, application or proceedings from 15.03.2020 till further orders.

6.The second respondent filed a counter stating that the second respondent received an order of attachment of immovable property from the Tax Recovery Officer, Puducherry stating that the petitioner and his brother had been ordered as defaulter under the Income Tax Act, 1961 for non payment of tax and interest and thereby prohibiting and restraining from transferring or creating charges over the subject property. Further, the second respondent directed the petitioner to get No Objection Certificate from the Income Tax Department at the time of presenting the Release Deed for registration. The petitioner also filed an appeal as provided under Section 72 of the Registration Act, 1908 and the same was rejected by the first respondent for the reason that it was not filed within the prescribed time limit i.e., thirty days from the date of order of the second respondent.

7. Admittedly, the petitioner and his brother P.Palani are facing proceedings initiated by the Income Tax Department and they had been ordered as defaulter. In pursuant to the same, the subject property was attached by the Income Tax Department. As held by this Court, order of attachment cannot be a bar to register the document and any document presented for registration pending the order of attachment is void only as against the claims enforceable under the order of the said attachment and not in respect of other claims. Therefore, the Release Deed of the property attached cannot be construed as illegal release. Further, the concerned Income Tax Department can very well exercise his rights as against the subject property, since the petitioner's brother relinquished his rights by execution in favour of the petitioner. Therefore, the orders impugned in this writ petition is liable to be aside.

8. Accordingly, the impugned orders (i) No.15221/RD/SRO (V)/ REFUSAL/2021 dated 16.02.2021 passed by the second respondent and No.1-1/RD/DRO/Pa/2021/354 dated 12.04.2021 passed by the first respondent are hereby set aside. The petitioner is directed to re-present the Release Deed executed by his brother within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the second

respondent is directed to register the same forthwith.

9. In the result, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. No order as to costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Lpp

To

1. The District Registrar,
   Office of the District Registrar,
   Government of Puducherry,
   Puducherry.

2. The Sub-Registrar,
   Office of the Sub-Registrar,
   Registration Department,
   Government of Puducherry,
   Saram, Puducherry.

+1cc to Mr.Prakash Adiapadam, Advocate, S.R.No.60252

+1cc to the Government Pleader, S.R.No.60479

W.P.No.17229 of 2021
and
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MG(CO)
RGA(01/12/2021)