



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P (MD) NO. 8422 of 2021

and

W.M.P (MD) No. 6357 of 2021

Palanivel

: Petitioner

.vs.

1. The Registrar,
District Registrar's Office,
Dindigul District.

2. The Sub-Registrar,
Sub-Registrar Office No. 2,
Dindigul District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned check slip order passed by the second respondent dated 19.3.2021 and to quash the same and consequently to direct the second respondent to forthwith register the sale deed, dated 19.3.2021 without insisting on production of any further documents within the time stipulated by this Court.

For Petitioner : Ms. S. Prabha

For Respondents : Mr. M. Lingadurai

Government Advocate

O R D E R

This Writ Petition has been filed challenging the impugned refusal Check Slip issued by the second respondent, dated 19.3.2021 and for a consequential direction to the second respondent to register the sale deed, dated 19.3.2021.

2. The case of the Petitioner is that the subject property originally belonged to one Armstrong Fernando and he sold the property in favour of one Periyasamy on 27.4.2010. The said Periyasamy by virtue of sale deed, dated 27.6.2018 sold the subject property in favour of the Petitioner. The Petitioner intended to sell the property in favour of one Annadurai and he executed a sale deed on 10.3.2021 and it was presented for registration before the second respondent. The second respondent has refused to register the document through, the impugned refusal Check Slip. Aggrieved by the same, the present Writ Petition has been filed before this Court.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Heard Ms. S. Prabha, learned counsel appearing for the Petitioner and Mr. M. Lingadurai, learned Government Advocate



appearing for the respondents.

4. When the matter came up for hearing on 2.7.2021, this Court directed the learned Government Advocate to take specific instructions on the stand taken by the Petitioner at Paragraph 7 and 8 of the affidavit filed in support of the Writ Petition. Thereafter, the matter was posted on 9.7.2021. This Court passed the following Order:

'The learned Government Advocate on instructions submitted that insofar as the mortgage that was created in favour of Indian Overseas Bank, the same has already been redeemed. Therefore, the averment made by the petitioner in the affidavit at paragraph No.7 is correct.

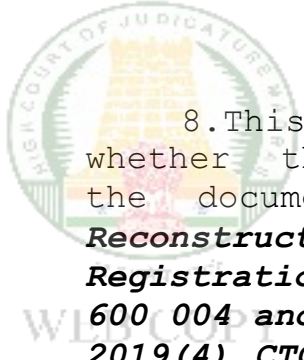
2. The learned Government Advocate circulated the attachment order passed by the Civil Court and it pertains to Survey No.110/1. The name of the petitioner is not found in the cause title. However, the learned counsel for the petitioner submitted that the property has been subdivided and the petitioner is the owner of the property in S.No.110/1A2B. The learned counsel for the petitioner is directed to produce relevant documents to substantiate the same. The learned Government Advocate shall take instructions and report before this Court.

3. Post this case under the same caption on 16.07.2021.

5. The above order shows that insofar as the mortgage created in favour of Indian Overseas Bank is concerned, it has already been redeemed. The crux of the issue pertains only to the order of attachment passed by the Civil Court in O.S.No.175 of 2018. The learned Government Advocate produced the copy of the order for the perusal of this Court.

6. The suit in O.S.No.175 of 2018 has been filed by one Vivek against one S.Periyasamy. In this suit, the order of attachment has been passed on 1.9.2018 and the subject property has been attached and it has also been effected and necessary entries have been made in the relevant records maintained by the second respondent. The above-said Periyasamy is the vendor of the Petitioner. However, he sold the property in favour of the Petitioner on 27.6.2018. It is clear that the order of attachment has taken place subsequent to the property being sold in favour of the Petitioner.

7. The learned Government Advocate appearing on behalf of the respondents submitted that the order of attachment pertains to the subject property and therefore, the second respondent cannot register any document and violate the orders passed by the competent Civil Court.



8. This Court had an opportunity to consider the question as to whether the order of attachment will be a bar for registration of the document. This judgment is reported in ***Pegasus Assets Reconstruction Private Limited .vs. The Inspector General of Registration, Government of Tamil Nadu, Santhome High Road, Chennai-600 004 and The Sub-Registrar, Mylapore, Chennai-600 004*** reported in **2019(4) CTC 851**. The relevant portions in the judgment are extracted hereunder:

'7. The only question arises in this case for consideration is as to whether the 2nd respondent is justified in refusing to register the assignment deed on the ground that some of the subject matter properties of the assignment deed are under attachments as stated supra.

8. The above issue involved in this case is no more res-integra in view of the fact that the very same issue was already considered by this Court and decided against the registering authority in a decision made in W.P.No.10647/2007 dated 13.10.2018. In fact, this Court, while passing the said order, followed the order passed in W.P.(MD).No.2632/2012, dated 13.03.2013, which in turn, followed the decision of the Apex Court reported in 1985 (2) SCC 167 (Balkrishan Gupta v. Swadeshi Polytex Limited). Paragraph Nos. 7 and 8 of the said order reads as follows:

'7. The point for consideration in this writ petition is whether the respondent is entitled to refuse registration of the sale deed on the ground that the subject matter properties of the sale deed are under Court attachment. The very same issue was considered by this Court in W.P.No.36079 of 2015 reported in 2016 (3) CTC 493 (S.Praveen Bohra vs. Joint-I Sub- Registrar) and the learned Judge found that the order of attachment cannot be a bar to register the document. In order to arrive at such conclusion, the learned Judge relied on several decisions of this Court as well as Apex Court. At paragraph Nos.6 to 9 of the said decision, the learned Judge has observed as follows:

6. It is relevant to refer to the unreported judgment of the Madurai Bench of Madras High Court in W.P.(MD) No. 2635 of 2012, dated 13.03.2013, in the case of K.D.P. Properties Private Limited v. The Sub-Registrar, relied on by the learned counsel for the petitioner, wherein, in paragraph No. 18, a reference was made to the decision of the Hon'ble Apex Court reported in (1985) 2 SCC 167, Balkrishan Gupta v. Swadeshi Polytex Limited, and it was held as follows:

18. In (1985) 2 SCC 167 (supra), the Hon'ble Supreme Court has held as under:

30. The consequence of attachment of certain shares



of a company held by a share holder for purposes of sale in a proceeding under section 149 of the Land Revenue Act is more or less the same. The effect of an order of attachment is what Section 149 of the Land Revenue Act itself says. Such attachment is made according to the law in force for the time being for the attachment and sale of movable property under the decree of a civil court. Section 60 of the Code of Civil Procedure, 1908 says that except those items of property mentioned in its proviso, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities of money, debts, shares in a corporation and all other saleable property, moveable or immovable, belonging to a judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor, or by another person in trust for him or on his behalf, is liable for attachment and sale in execution of a decree against him. Section 64 of the Code of Civil Procedure, 1908, states that where an attachment of a property is made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment. What is forbidden under Section 64 of the Code of Civil Procedure is a private transfer by the judgment-debtor of the property attached contrary to the attachment, that is, contrary to the claims of the decree holder under the decree for realization for which the attachment is effected. A private transfer under Section 64 of the Code of Civil Procedure is not absolutely void, that is, not void as against all the world but void only as against the claims enforceable under the attachment. Until the property is actually sold the judgment debtor retains title in the property attached. Under Rule 76 of Order 21 of the Code of Civil Procedure, 1908, the shares in a corporation which are attached may be sold through a broker. In the alternative such shares may be sold in public auction under Rule 77 thereof. On such sale either under Rule 76 or under Rule 77, the purchaser acquires title. Until such sale is effected, all other rights of the judgment debtor remain unaffected even if the shares may have been seized by the officer of the court under Rule 43 of Order 21 of the Code of Civil Procedure, 1908 for the purpose of effecting the attachment, or through a Receiver or through an order in terms of Rule 46 of Order 21 of the Code of Civil Procedure may have been served on the judgment debtor or on the company concerned.



raised in this writ petition. So far as the order of attachment passed by the DRT is concerned, the transfer is not void generally but it is void only as against the claims enforceable under the said attachment. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale. However, if the 2nd respondent bank exercises its right as against the property, the petitioner cannot raise any objection because the sale of the vendor in favour of the petitioner is void in respect of the order of attachment obtained by the 2nd respondent bank. So, even if the property is sold in favour of the petitioner, the 2nd respondent bank can always exercise its right as against the said property.

20. In view of the above finding, I am of the opinion that the sale of the subject property 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. Therefore, the sale of the property, which is under attachment, cannot be said as illegal.

In the light of what is stated above, the writ petition is allowed and the 1st respondent-Sub Registrar, Kochiadai, Madurai, is directed to release the registered document in favour of the petitioner within a period of one week from the date of receipt of a copy of this order. No costs.

7. It is also worthwhile to refer to the unreported judgment of Madurai Bench of Madras High Court in W.P. (MD) No. 14388 of 2014, dated 01.09.2014, in the case of M. Chitra v. The Sub-Registrar, relied on by the learned counsel for the petitioner, wherein, in paragraph No. 5, it was held as follows:

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 C.P.C. stating that attachment before 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.

8. Thus, it is crystal clear that it is well settled principle of law that the order of attachment cannot be a bar to register the document. Therefore, I am of the view that there is no need for this petitioner to file an appeal. I am of the opinion that the sale of the subject property, 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. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale.''

9. The above judgment was followed by this Court in a subsequent Writ Petition in **W.P.No.18710 of 2020, dated 15.12.2020.**

10. It is clear from the above judgments that the sale of the subject-property is void only as against the claims enforceable under the order of attachment and not in respect of other claims. That apart, the order of attachment will not bind the Petitioner, since he is not a party to the suit and even before the order of attachment was passed by the Civil Court, the Petitioner had become the owner of the subject-property. Therefore there is no doubt in the mind of this Court that the order of attachment passed by the Civil Court on 1.9.2018 will not be a bar for the Petitioner to deal with the subject property.

11. In view of the above discussion, the impugned refusal Check Slip issued by the second respondent, dated 19.3.2021 is hereby quashed. There shall be a direction to the second respondent to register the sale deed, if it is otherwise in order and necessary stamp duty and registration charges are paid. The document shall be released immediately after the registration.

12. In the result, the Writ Petition is allowed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

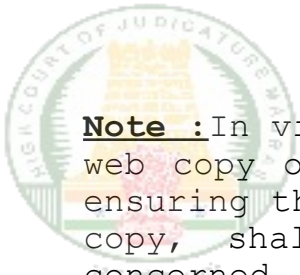
Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To

1.The Registrar,
District Registrar's Office,
Dindigul District.

2.The Sub-Registrar,
Sub-Registrar Office No.2,
Dindigul District.

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-23000[F] dated 16/07/2021)

+1 CC to M/s.SPL GP (SR-23210[F] dated 19/07/2021)

W.P(MD)NO.8422 of 2021

and

W.M.P(MD)No.6357 of 2021

16.07.2021

RD(27.07.2021) 7P 5C