



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P. (MD)No.8407 of 2020

R.Ramesh

... Petitioner

Vs.

1.The Sub-Registrar,
Budalur SRO,
Thanjavur District.

2.The Manager,
Indian Overseas Bank,
Abishekapuram Branch,
Main Road,
Mannarpuram,
Trichy - 620 020.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, directing the first respondent to register the Sale Certificate, dated 09.03.2020, executed by the second respondent in favour of the petitioner, which is assigned a number as P/Budalur/2/2020, vide Receipt No.567/2020, dated 11.03.2020 and to return the same to the petitioner after registration.

For Petitioner : Mr.E.Om Prakash
Senior Counsel
for Mr.S.Arivazhagan

For R1 : Mr.K.Sathiya Singh
Additional Government Pleader

For R2 : Mr.D.Dhanapal

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ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner is the successful bidder in the E-Auction conducted on 09.12.2019 by respondent No.2. Upon his payment of entire sale consideration, a Sale Certificate was issued on 09.03.2020. The petitioner presented the said Sale Certificate for



registration before respondent No.1 on 11.03.2020. Upon taking the same on file, respondent No.1 kept it as pending document without registering it on the premise that an attachment before judgment has been registered pursuant to the order dated 03.09.2015, passed by the learned III Additional District Judge, Trichy, in O.S.No.81 of 2014 and I.A.No.400 of 2014.

2.The learned Senior Counsel appearing for the petitioner submitted that in law, respondent No.1 cannot decline registration of the Sale Certificate. The mortgage of the property with respondent No.2 was on 24.10.2008. It was also registered. Therefore, it is the encumbrance registered subsequently by way of an order of the Court, which cannot be sustained in the eye of law. The petitioner does not seek to set aside the attachment before the encumbrance made, but merely, to register the Sale Certificate. Under those circumstances, there is no need to implicate either the plaintiff or the borrower in the suit.

3.The learned counsel appearing for respondent No.2 also concurred with the submissions made by the learned Senior Counsel appearing for the petitioner.

4.The learned Additional Government Pleader appearing for respondent No.1 submitted that the remedy open to the petitioner is to approach the Civil Court and set aside the order of attachment passed. Being the Statutory Authority, respondent No.1 duly complied with the order of the Court.

5.The facts as narrated are not in dispute. The property was mortgaged on 24.10.2008 by the borrower. It was accordingly, registered. Therefore, respondent No.2 / Bank [Mortgagee] now, for non-payment of dues, brought up the property for sale and thereafter, sold the same in favour of the petitioner. The borrower can never challenge the sale. The said sale has become final. The petitioner has paid the entire sale consideration. It is subsequently alone, i.e., in the year 2015, the learned III Additional District Judge, Trichy, has passed the order of attachment. Furthermore, the petitioner does not seek to set aside the encumbrance made by way of attachment before judgment and seeks only registration of Sale Certificate.

6.The learned Senior Counsel appearing for the petitioner has placed reliance upon the order passed by a Division Bench of this Court in **Central Bank of India Vs. The Joint Sub-Registrar and others [W.P.(MD)No.10724 of 2018, dated 06.12.2018]** reported in **MANU/TN/7117/2018**, wherein at Paragraphs 9 and 10, it has been held as follows:-

''9. In the light of the judgment of the Full Bench of this Court reported in **2016 (6) CTC 769** (cited supra) and on a conjoint reading of Section 26-E of the SARFAESI Act and



Section 31-B of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, there cannot be any doubt that the rights of a secured creditor to realise the debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority, inasmuch as Section 31-B of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was introduced with a 'notwithstanding' clause and it has also come into force from 01.09.2016.

10. In such view of the matter, we are of the opinion that the order of attachment before judgment cannot be a bar for the first respondent to register the sale certificate in respect of the property in question and hence, there cannot be any impediment for the first respondent to register the sale certificate dated 14.03.2018 issued in favour of the tenth respondent.'

7. In such view of the matter, we do not find any need to implead either the borrower or the plaintiff in the suit. The borrower does not have any right in a case of divested property. He has also not questioned the attachment before judgment. Insofar as the plaintiff is concerned, nothing has been discussed in the proceedings about the order obtained for attachment before judgment and he cannot have any grievance over the registration of the Sale Certificate by the petitioner. We are not deciding the *inter se* rights of the parties, though we have quoted the order of the Division Bench of this Court.

8. In such view of the matter, respondent No.1 is directed to register the Sale Certificate, dated 09.03.2020, executed by respondent No.2 and presented by the petitioner, within a period of four weeks from the date of receipt of a copy of this order, after duly complying with the other requisite formalities.

9. This Writ Petition is disposed of with the above direction. No costs.

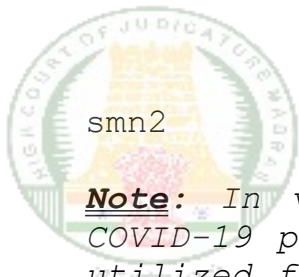
Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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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.

To

1.The Sub-Registrar,
Budalur SRO,
Thanjavur District.

2.The Manager,
Indian Overseas Bank,
Abishekapuram Branch,
Main Road,
Mannarpuram,
Trichy - 620 020.

+1 CC to Additional Government Pleader (SR-649[F] dated
08/01/2021)

W.P. (MD)No.8407 of 2020
07.01.2021

VB (21.01.2021) 4P 4C