IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.541 of 2022

Maximus Arc Limited
59A - 18/1A-5A, 3rd Floor, Sri Plaza
Teacher's Colony, Patamata
Vijayawada 520 008
Rep. by its Vice President K.Hari Krishna.
.. Appellant/Petitioner

Vs.

1. The Sub Registrar
Sub Registrar Office
SH 57, Ramanujar Nagar, Sriperumbudur
Tamil Nadu 602 105.

2. Pennalur Panchayat
Pennalur Village, Uthiramerur
Kancheepuram District
Tamil Nadu 603 402.

3. M/s. Sri Devi Karumariamman Educational Trust
No.5, Chellammal Complex
Arcot Road, Janaki Nagar
Valasaravakkam, Chennai 600 087
Rep. by its Trustee J.Kumaran. ..Respondents/Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 04.01.2022 in W.P.No.8409 of 2021.

Prayer in WP.No.8409 of 2021:
Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Declaration, to declare the impugned gift deed executed by the third respondent bearing Document Number 4502 of 2012 registered by the first respondent as null and void and consequently, direct the first

respondent to remove the entry of Document number 4502 of 2012 in the encumbrance certificate in relation to the schedule mentioned properties.

Survey Number	Total Extent (In Cents)	Extent Transferred Through the Impugned Gift Deed (In Cents)	Locality
115/1	33	33	Pennalur Village, Sri Perumbudur Taluk
116/1B	78	21	Pennalur Village, Sri Perumbudur Taluk
116/2	18	18	Pennalur Village, Sri Perumbudur Taluk
116/3B	71	71	Pennalur Village, Sri Perumbudur Taluk
116/9	34	34	Pennalur Village, Sri Perumbudur Taluk

For the Appellant : Mr.Vaibhav
For M/s. Nithyaesh and Vaibhav

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

The writ appeal has been filed against the order dated 04.01.2022 whereby the writ petition preferred by the writ appellant was dismissed by the learned Single Judge.

2. The writ petition was filed seeking a declaration to declare the registration of the gift deed to be null and void and

for a direction to the first respondent to remove the entry of document No.4502 of 2012 in the encumbrance certificate in relation to the schedule mentioned properties referred to by the appellant and quoted in the impugned order.

3. The learned Single Judge passed a detailed order taking note of the facts which inter alia show that the writ appellant being an ARC under the SARFAESI Act and RDB regime, entered into an assignment agreement dated 24.11.2020 with the Central Bank of India, where the loan accounts pertaining to the third respondent / borrower were assigned to the appellant in terms of the SARFAESI Act, 2002.

4. A challenge to the said assignment was made by the third respondent in W.P.No.17599 of 2020, which was dismissed by order dated 08.12.2020 upholding the said assignment. Accordingly, the appellant was assigned a Debt Recovery Certificate on the basis of the final judgment and decree dated 29.07.2019 passed by the Debts Recovery Tribunal II, Chennai, for a sum of Rs.240 crore approximately, as against the defaulting borrower third respondent.

5. The third respondent had entered into an agreement with the Central Bank of India and had deposited the title deeds of properties, in which one of the properties of an extent of 33 cents comprised in S.No.115/1 was executed as a gift deed in favour of the second respondent registered vide document No.4502 of 2012 dated 02.05.2012. It was after the mortgage of the property with the Central Bank of India. In respect of the said property, a security interest was already created in favour of the bank and it would supersede the interests of any other authority as per Section 31B of RDB Act, 1993.

6. As per the provisions of the SARFAESI Act, where a security interest is created in favour of the secured creditor, the same shall have priority over any subsequent security interest created upon such property and any transfer by way of sale, lease or assignment shall be subject to such claim. Therefore, the issue raised by the appellant was that the first respondent ought not to have registered the gift deed executed by the third respondent, that too after the property was mortgaged with the Central Bank of India.

7. The first respondent filed a counter stating that there is no provision under the Registration Act, 1908 to remove the registered document from Index-II and only a foot note can be made. The property comprised in S.No.116/1B to an extent of

0.08.1 hectare, which is the subject matter of the Deed of Memorandum of Deposit of Title Deeds alone included in the gift deed executed by the third respondent.

8. A counter affidavit was even filed by the third respondent alleging that the gift deed dated 02.05.2012 was executed in favour of the second respondent for the purpose of common utilisation such as park, road, etc. Referring to other survey numbers, it was stated that the gift in favour of the second respondent was executed at the time when the third respondent applied for DTCP approval for the land and building as a pre-condition.

9. The main contention thereupon taken before the learned Single Judge was that the gift deed was executed in favour of the second respondent with the consent of the bank for the purpose of obtaining DTCP approval. It was not that after keeping the bank in dark, the gift deed was executed. The Assignor bank had accepted the subsequent mortgage, excluding the land covered under the gift deed and not mentioned the said lands in the schedule to the assignment agreement dated 24.11.2020 and therefore, the appellant claims its right. After taking note of all the relevant facts, the learned Single Judge did not find a case on merit so as to grant the prayer.

10. While hearing the appeal, learned counsel for the appellant was asked about the maintainability of the writ petition. It was essentially to challenge the gift deed registered by the first respondent. After registration of the deed, there is no provision for deregistration or passing an order by the Sub Registrar. Rather, in case any one is aggrieved by the registration or execution of the deed, he can maintain a suit for its cancellation. The appellant, without availing the said remedy, maintained the writ petition, which, according to us, was not even maintainable.

11. The learned Single Judge addressed the issue on merits and taking note of the gift deed executed with the consent of the bank and the other relevant facts, dismissed the writ petition.

12. Addressing the issue of maintainability of the writ petition, learned counsel for the appellant has referred to the judgment of this Court in the case of Asset Reconstruction Company (India) Ltd. v. The Inspector General of Registration [Order dated 04.01.2016 in W.P.No.33462 of 2014]. It is stated that the issue in reference to the maintainability of the writ

petition for challenging the sale deed has been addressed by the learned Single Judge and accordingly, our attention was drawn to paragraph 19 of the said order, which is extracted under:

> "19. Learned counsel appearing for respondents also raised the question of maintainability in other aspects. According to them, the petitioner ought to have filed a Civil Suit. The Order passed by the Apex Court would debar the petitioner from filing this writ petition and having filed impleading petition in the civil suit, the petitioner cannot seek the relief in this writ petition. All the three submissions are liable to be rejected. The petitioner does not want to canvass any disputed questions of fact before this Court, though the unregistered power deed is disputed. On the contrary, the petitioner's case is qua the registration of the document based upon the power deed, which did not authorise such an act. Therefore, there is no necessity for the petitioner to file a civil suit. Similarly, the issue involved before the Apex Court in S.L.P. (Crl) No.838 of 2015 dated 27.2.2015 is totally different. The Law is quite settled that an issue, which is not consciously considered and decided, would not partake the character of a binding decision. The mere fact an application for impleadment has been filed in a suit by a third party, also for the aforesaid reasons, would not dis-entitle the petitioner from filing the writ petition, more so, when the official respondents herein are not parties in the said proceedings, In any case, these issues cannot be raised by the petitioner in the said suit, being at best, it only becomes a party defendant. Furthermore, even as per the submissions of the learned counsel for respondents, the application filed for impleadment has been returned.

13. On a perusal of the paragraph quoted above, we do not find that the issue has been addressed by the learned Single Judge in reference to any provision of law. Rather, we find that in view of the ratio laid down by the Apex Court in catena of decisions, the writ petition would not be maintainable, but only a civil suit would be maintainable to seek cancellation of the

deed. In view of the above and as reference to any provision of law has not been made to hold that the writ petition would be maintainable, we are unable to accept the decision supra.

14. The other judgment referred to by learned counsel for the appellant is of a Division Bench in K.J.Sumathy v The District Registrar [Order dated 02.11.2021 in W.P.No.27120 of 2018] wherein, referring to the facts pertaining to the execution of the deed, an exception was carved out to hold writ petition to be maintainable. It is again without referring to the provision which permits cancellation of the registration or any other provision for it and the judgment so rendered on facts and as an exception.

15. In the instant case, the appellant has challenged the registration of the gift deed, with a consequential prayer to remove it from the book of registration on the ground of fraud.

16. Learned counsel for the appellant, at this stage, tried to refer to the grounds of challenge, without referring to an argument to this effect before the learned Single Judge. A new case on facts cannot be made before the Division Bench by challenging the judgment of the learned Single Judge. In any case, even an issue in reference to fraud is taken to challenge the deed, whether it is sale deed or any other deed including gift deed in question, it has to be decided addressing the fact which does not remain in the domain of the High Court while exercising the jurisdiction under Article 226 of the Constitution of India. Rather, it remains only with the civil Court and otherwise we are to be guided by the judgment of the Supreme Court in regard to the subject matter.

17. The last judgment referred to by learned counsel for the appellant is in the case of J.Jayaniithaa v. Inspector General of Registration [Order dated 15.12.2020 in W.P.Nos.18721 of 2020 etc. cases]. Paragraphs 9 and 10 of the said judgment were referred to pursue the argument raised by learned counsel for the appellant regarding maintainability of the writ petition. If the facts of that case are looked into, they are distinguishable from the facts of the instant case. Moreover, we do not find a reference to any of the judgment on the issue while taking a view that in a given case, a writ petition would be maintainable for challenge to the deeds, which may include the sale deed, gift deed or even a settlement deed.

18. In the light of the aforesaid, we do not find that the writ petition was maintainable. Otherwise, on facts, we do

not find any error in the judgment so as to cause interference with, as the appellate jurisdiction is to be exercised only when an error in the judgment is shown and not otherwise.

19. In view of the aforesaid discussion, we do not find a case in favour of the appellant. Accordingly, the writ appeal fails and is dismissed. Consequently, CMP Nos.4378 and 4382 of 2022 are also dismissed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

kpl/drm

To

1. The Sub Registrar
Sub Registrar Office
SH 57, Ramanujar Nagar, Sriperumbudur
Tamil Nadu 602 105.

2. Pennalur Panchayat
Pennalur Village, Uthiramerur
Kancheepuram District
Tamil Nadu 603 402.

W.A.No.541 of 2022

SSD(CO)
CB(28/03/2022)