IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2021

PRONOUNCED ON : 04.01.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.8409 of 2021
and W.M.P.No.8956 of 2021

Maximus Arc Limited,
A Company Incorporated under Companies Act 2013,
Having registered and corporate office at,
59 A - 18/1A - 5A, 3rd Floor, Sri plaza,
Teacher's Colony, Patamata, Vijayawada - 520008.
Represented by its Assistant Vice President
Shri K.Hari Krishna. ... Petitioner

-Vs-

1. The Sub Registrar,
Sub Registrar Office,
SH 57, Ramanujar Nagar,
Sriperumbudur,
Tamil Nadu - 602105.

2. Pennalur Panchayat,
Pennalur Village, Uthiramerur,
Kancheepuram District,
Tamil Nadu - 603402.
(R2 amended as per order dated
04.01.2022 made in W.M.P.No.28757 of 2021
in W.P.No.8409 of 2021)

3. M/s.Sri Devi Karumariamman Educational Trust,
No.5, Chellammal Complex,
Arcot Road, Janaki Nagar,
Valasaravakkam, Chennai - 600087.
Represented by its Trustee
Mr.J.Kumaran ... Respondents

Prayer :- 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 Petitioner : Mr.Nithyaesh Natraj

For R1 : Mr.Yogesh Kannadasan
Special Government Pleader

For R2 : Mr.P.Baladhandayutham
Special Government Pleader

For R3 : Mr.R.Gopinath
for Mc Gan Law Firm

ORDER

This Writ Petition has been filed for the issuance of 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.

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2. Heard Mr.Nithyaesh Natraj, learned counsel appearing for the petitioner, Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the first respondent, Mr.P.Baladhandayutham, learned Special Government Pleader appearing for the second respondent and Mr.R.Gopinath, learned counsel appearing for the third respondent.

3. The petitioner is 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, wherein the loan accounts pertaining to the third respondent / borrower was assigned to the petitioner in terms of the SARFAESI Act, 2002. It was challenged by the third respondent in W.P.No.17599 of 2020 and this Court by an order dated 08.12.2020 has upheld the said assignment and dismissed the writ petition. The petitioner was assigned a Debt Recovery Certificate on the basis of the final Judgment and Decree, dated 29.07.2019 passed by the Hon'ble Debt Recovery Tribunal-II, Chennai, for a sum of Rs.240 crores approximately, as against the defaulting borrower third respondent. The third respondent had entered into an agreement with the Central Bank of India and they had deposited the title deeds in which one of the properties is comprised in Survey No.116/1B ad-measuring 78 cents. The other schedule mentioned properties which are comprised in Survey No.116/11, ad-measuring 26 cents, Survey No.115/1 ad-measuring 33 cents, Survey No.116/9, ad-measuring 34 cents, Survey No.116/2, ad-measuring 18 cents and Survey No.116/3B ad-measuring 71 cents.

4. Out of the above said properties, the property to an extent of 33 cents comprised in Survey 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, i.e. After mortgage with the Central Bank of India. In respect of the said properties, already a security interest was created in favour of the bank and it would supersede the interests of any other authority as per Section 31B of RDB Act, 1993. Further, the Section 26C of the SARFAESI Act, 2002 provides that where a security interest is created in favour of a security creditor, the same shall have priority over any subsequent security interest created upon such property and any transfer by way of sale, lease, assignment shall be subject to such claim. Therefore, the first respondent ought not to have registered the gift deed executed by the third respondent that too after mortgage with the Central Bank of India, since, the third respondent had no authority in law to execute the impugned gift deed in favour of the second respondent.

5. The first respondent filed a counter and revealed that there is no provisions under the Registration Act, 1908, to remove the registered document from Index-II and only a foot note can be made if the Hon'ble Court treats the document by its order as null and void. The property comprised in Survey 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 in favour of the second respondent. There is no provisions in the Registration Act, 1908, restraining the registering officer from entertaining registration of the properties which are subject matter of mortgage, since, the mortgage or attachment goes along with the property whoever got transfer of the said properties is liable to discharge the debt of the mortgagee or the subject properties are liable for public auction to recover the debts due to the mortgagee.

6. The third respondent filed a counter and revealed that the gift deed, dated 02.05.2012 was executed in favour of the second respondent for the purpose of common utilization such as park, road, etc,. The land in Survey Nos.115/1, 116/2, 116/3B, 116/9 and 117/2C, altogether ad-measuring 2 acres and Survey No.116/1B ad-measuring 0.21.4 acres out of the total extent of 0.78 acres, altogether ad-measuring 2.21.4 acres situated at No.104, Pennalur Village, Sriperumbudur Taluk, Kancheepuram District, was gifted in favour of the second respondent when the third respondent applied for DTCP approval of its land and building as a pre-condition. Only after the application for DTCP approval of the properties and execution of the gift deed in favour of the second respondent, the term loan agreement dated 05.05.2012 was entered between the third respondent and the consortium and hence, the said gift deed is valid and it was not an act of fraud. The land which was gifted, in favour of the second respondent was not mentioned in the memorandum of deposit of title deeds in the B schedule.

7. That apart, the said gift deed was executed in favour of the second respondent with the consent of the bank for the purpose of obtaining DTCP approval. Further, the Assignor Bank having 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, based on which the petitioner claims right. Except the property comprised in Survey No.116/1B, ad-measuring 0.08.1 hectares others properties mentioned in the gift deed are not included in the Deed of Memorandum of Deposit of title deeds. If any property is sold or gift with existing mortgage, the transferee steps into the shoes of the mortgagor. He has the right to redeem the property by paying the mortgage money. Therefore in the name of regulating the registration, any circular which is in the nature of violating the substantive provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law.

8. In view of the above, this Court finds no merits in this writ petition. The writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

1. The Sub Registrar,
   Sub Registrar Office,
   SH 57, Ramanujar Nagar,
   Sriperumbudur,
   Tamil Nadu - 602105.

2. Pennalur Panchayat,
   Pennalur Village, Uthiramerur,
   Kancheepuram District,
   Tamil Nadu - 603402.

+1cc to the Government Pleader, SR.No.1089

W.P.No.8409 of 2021
and W.M.P.No.8956 of 2021

GSM(CO)
CB(24/02/2022)