IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2022

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No.19443 of 2022
and
W.M.P.No.18750 of 2022

D.Balasubramnian ... Petitioner

Vs.

1. The Sub Registrar,
   Vellakovil SRO,
   Vellakovil – 638 111,
   Tiruppur District.

2. The Assistant Commissioner,
   (Commercial Tax),
   Kangayam,
   Tiruppur District.

3. The Authorized Officer,
   Canara Bank,
   Vellakovil Branch,
   Dharapuram Road,
   Vellakovil – 638 111,
   Tiruppur District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Refusal Check Slip order in RFL/Vellakoil/59/2021 dated 22.10.2021 passed by the 1st respondent, in view of the impugned orders of attachment orders made in TIN:33083083726/2008-09 to 2013-14 CST:994687/2009-10 to 2013-14 dated 07.12.2016 and the proceedings in

TIN:33743085497/2013-14, 14-15 CST:1155886 dated 12.09.2016 passed by the 2nd respondent quash the same and consequently to direct the 1st respondent to register the sale certificate dated 21.12.2021 executed by the third respondent in favour of the petitioner.

For Petitioner : Mr.N.Manoharan

For R1 : Mr.R.P.Murugan Raja
Government Advocate

For R2 : Mr.C.Harsha Raj
Additional Government Pleader

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ORDER

This writ petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus to quash the impugned Refusal Check Slip in RFL/Vellakoil/59/2021 dated 22.10.2021 passed by the first respondent, in view of the impugned orders of attachment orders made in TIN:33083083726/2008-09 to 2013-14 CST:994687/2009-10 to 2013-14 dated 07.12.2016 and the proceedings in TIN:33743085497/2013-14, 14-15 CST:1155886 dated 12.09.2016 passed by the second respondent and consequently to direct the first respondent to register the sale certificate dated 21.12.2021 executed by the third respondent in favour of the petitioner.

2. Since no adverse order is being passed against the third respondent, notice to third respondent is dispensed with.

3. It is the case of the petitioner that the property in R.S.No.1531/1 (presently R.S.No.1531/1A), Ward No.2 of an extent of 19,982 sq.ft. situated in Rettivalasu, Vellakovil Municipality, Vellakovil, Kangayam Taluk, Tiruppur District had been mortgaged by one V.Nithya in favour of the third respondent Bank. Due to the non-payment of the loan liabilities, the third respondent bank issued demand notice dated 10.02.2020 and subsequently issued an e-auction sale notice dated 16.10.2020. Thereafter, the petitioner participated in the e-auction sale and his bid amount was declared as the highest sale price. After deposition of entire bid amount, the third respondent Bank had issued a Sale Certificate dated 21.12.2021 in favour of the petitioner. When the petitioner presented the said Certificate before the first respondent for registration, the same was refused to be registered vide impugned Refusal Check Slip dated 22.12.2021 in view of the orders of attachment dated 12.09.2016 and 07.12.2016 issued by the second respondent by creating an encumbrance over the subject properties towards the commercial tax liability. Challenging the same, the present Writ Petition

is filed seeking the aforesaid relief.

4. Learned counsel for the petitioner submitted that though the third respondent Bank is the secured creditor, by operation of law, the Assistant Commissioner of Kangeyam / second respondent attached the subject property for non-payment of tax and created encumbrances over the same vide proceedings dated 12.09.2016 and 07.12.2016. Hence it would suffice if this Court issues a direction to the first respondent to enterain the sale certificate dated 21.12.2021 presented by the petitioner for registration without interfering with the proceedings of the Assistant Commissioner of Kangeyam / second respondent dated 12.09.2016 and 07.12.2016. In support of his contention, he relied upon the decision of this Court in the case of ***S.Praveen Bohra Vs. Joint-I Sub-Registrar*** reported in ***2016 (3) CTC 493.*** The relevant portion of the above said decision is extracted hereunder:

> "***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 M/s.K.D.P.Properties Private Limited vs. The Sub-Registrar and other, 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 and others vs. Swadeshi Polytex Limited and another, 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 shareholder 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 realisation 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 though 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."*

19.The dictum laid down in the above judgment (1985) 2 SCC 167 (supra), gives a fitting answer to the issue 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 vs. 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."*

5. Learned Government Advocate appearing for the first respondent submitted that the first respondent has no objection to register the Sale Certificate presented by the petitioner.

6. Learned Additional Government Pleader appearing for the second respondent submits that already by operation of law the subject property was attached for non-payment of tax by the second respondent vide proceedings dated 12.09.2016 and 07.12.2016. Since the mortgage of the subject property

with the third respondent Bank is prior to the proceedings of the second respondent, this Court may grant liberty to the petitioner and the second respondent to agitate the issue with regard to operation of law separately in the manner known to law.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. The issue involved in the present case is no longer *res integra* as similar issue was considered by this Court in the case of ***S.Praveen Bohra Vs. Joint-I Sub-Registrar*** reported in ***2016 (3) CTC 493,*** wherein this Court categorically held that the order of attachment cannot be a bar to register the document. In view of the abovesaid decision, this Court directs the first respondent to register the document presented by the petitioner upon receipt of necessary Stamp Duty and Registration Charges. However, this Court without expressing any opinion on the merits of the case and without interfering with the proceedings of the second respondent dated 12.09.2016 and 07.12.2016 grants liberty to the petitioner and the second respondent to agitate the issue separately with regard to operation of law under the provisions of the Tamil Nadu Value Added Tax in the manner known to law.

9. With the above observation and directions, the Writ Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

01.08.2022

Index : Yes / No
Speaking order : Yes / No

RAP

To

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   (Commercial Tax),
   Kangayam,
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M.DHANDAPANI, J.

RAP

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