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W.P.No.16257 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2022

CORAM :
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.16257 of 2022
and W.M.P.No.15602 of 2022

1.D.Arunachalam

2.A.S.Shanmugam

... Petitioners

Vs.

The Sub Registrar,
Dharapuram SRO,
Dharapuram,
Tiruppur District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorified Mandamus, calling for the records relating to the impugned refusal Check Slip in RFL/Dharapuram/17/2022 dated 03.06.2022 passed by the respondent, quash the same and consequently direct the second respondent to register the sale deed dated 20.05.2022 executed by Thiru Duraisamy grounder in respect of the property measuring 3.10.5 hrs., in R.S.No.275 and 1.43.72 hrs., in R.S.No.279/1 in Sirukinar Village, Dharapuram Taluk, Tiruppur District.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.G.Krishna Raja,



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Additional Government Pleader

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ORDER

The petition has filed this writ petition for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned refusal Check Slip in RFL/Dharapuram/17/2022 dated 03.06.2022 passed by the respondent, quash the same and consequently direct the second respondent to register the sale deed dated 20.05.2022 executed by Thiru Duraisamy gounder in respect of the property measuring 3.10.5 hrs., in R.S.No.275 and 1.43.72 hrs., in R.S.No.279/1 in Sirukinar Village, Dharapuram Taluk, Tiruppur District.

2. The case of the petitioners is that the first petitioner's father viz., late S.Duraisamy Gounder is the owner of the aforesaid subject property situated in Sirukinar Village, Dharapuram, Tiruppur District and obtained Patta Nos.734 and 158 in respect of R.S.Nos.275 and 279/1. The subject property was under attachment as per the order dated 14.08.2003 made in I.A.No.380 of 2003 in O.S.No.19 of 2003 on the file of the Ld. District Munsif Court, Kangayam and it was also communicated to the respondent. Subsequent to the order of the Court below, petitioner's father had settled the entire liability and obtained a



receipt dated 20.09.2022, but, failed to revoke the order of attachment made in I.A.No.380 of 2003 in O.S.No.19 of 2003. Without knowing all these facts, the second petitioner purchased the subject property from the first petitioner. When he presented the sale deed dated 20.05.2022 before the respondent and the same was refused to be registered vide impugned refusal Cheque Slip dated 03.06.2022 in view of the order of attachment dated 14.08.2003 by creating an encumbrance over the subject property. Challenging the same, the petitioners filed this present writ petition.

3. When the matter was taken up for hearing, the learned counsel for the petitioner submitted that the issue arises in the present case is no longer *res integra*. Merely there is an order of attachment by the Civil Court and the same cannot be a ground for refusing to register the document, if any document is created in respect of the said property pursuant to the right acquired by the petitioner. Hence it would suffice if this Court issues a direction to the respondent to entertain the sale deed dated 20.05.2022 presented by the petitioner for registration without interfering with the proceedings of the respondent dated 03.06.2022. 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



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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 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.”

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, Kochiada, 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



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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.”

4. The learned Additional Government Pleader appearing for the respondent on instruction submitted that already there is an encumbrance in regard to the attachment, unless the encumbrance is cleared in the manner known to law, the document cannot be entertained. Accordingly, he prayed for dismissing this writ petition.

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

6. 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



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document. The present case on hand makes it clear that the pending order of attachment is not only agents enforceable under the order of attachment and not interpret other claim. Merely there is an order of attachment by the Civil Court and the same cannot be a ground for refusing to register the document.

7. In view of the abovesaid decision, the impugned order dated 20.05.2022 passed by the respondent is set aside and this Court directs the respondent to entertain the document presented by the petitioners and pass appropriate orders upon receipt of necessary Stamp Duty and Registration Charges.

8. The writ petition is allowed on above terms. No costs. Consequently connected miscellaneous petition is closed.

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