



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

C O R A M

THE HON'BLE MS.JUSTICE V.M.VELUMANI

W.P.No.24371 of 2021

S.Balasubramaniam

...Petitioner

Vs

1. The Secretary,
Avinashi Co-operative Primary Agricultural
Rural Development Bank,
N.K.1694, Avinashi,
33, Va.Vu.Si residence,
Tiruppur District - 641 654.

2. The President,
Avinashi Co-operative Primary Agricultural
Rural Development Bank,
N.K.1694, Avinashi,
33, Va.Vu.Si residence,
Tiruppur District - 641 654.

3. N.Nandhakumar

... Respondents

Prayer Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Manadamus, to quash the order passed by the 2nd respondent dated 20.10.2021 and further direct the respondents 1 and 2 to execute mortgage discharge receipt in respect of loan Account No.2878, pertaining to mortgage deed bearing Doc.No.1398/1976 on the file of the Sub-Registrar, Avinashi, in view of the entire repayment of the mortgage loan dated 26.11.1976 in pursuance of the no-dues letter dated 11.08.2021.

For Petitioner : Mr.R.Vivek
for Mr.S.Senthil

For R1 & R2 : Mr.U.Baranidharan
Additional Government Pleader

For R3 : Mr.B.Arunbala
for Mr.V.Anandhamurthy

ORDER

The petitioner has come out with the present Writ Petition challenging the order passed by the 2nd respondent dated



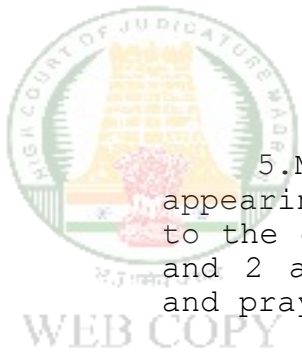
20.10.2021 and for a direction to the respondents 1 and 2, to execute mortgage discharge receipt in respect of loan Account No.2878, pertaining to mortgage deed bearing Doc.No.1398/1976 on the file of the Sub-Registrar, Avinashi.

WEB COPY

2. According to the petitioner, he and his brother S.Natarajan jointly purchased the property in S.F.No.68/1 measuring 0.79 acres, S.F.No.34/1 measuring 1.38 acres and S.F.No.64 measuring 1.22 acres at Avinashi. They obtained a loan of Rs.6,400/- from the 1st respondent and mortgaged the said property with the 1st respondent and executed the registered mortgage deed. Subsequently, they discharged the entire mortgage loan on 30.06.1987 and got back original documents on 24.08.1989. According to the petitioner, due to ignorance, the petitioner and his brother did not approach the respondents 1 and 2 to execute the registered discharge receipt. When the petitioner wanted to settle the share of the property to his children, he came to know that mortgage in favour of respondents 1 and 2 reflects in the encumbrance certificate. Therefore, the petitioner approached the respondents 1 and 2 in person as well as by representation dated 15.10.2021 for executing the discharge receipt. The respondents 1 and 2 refused to execute the discharge receipt on the ground that the 3rd respondent has given an objection letter dated 04.08.2021 from executing the discharge receipt. In such circumstance, the petitioner has come out with the present Writ Petition challenging the said order.

3. The learned counsel appearing for the petitioner submitted that the dispute is between the 3rd respondent, his mother and sister with regard to the share of his father S.Natarajan's property. No claim is made against in respect of the petitioner's share. When mortgage is completely discharged, the respondents 1 and 2 are bound to execute the discharge receipt and register the same in the concerned Sub-Registrar Office, so as to remove the cloud over the properties and prayed for allowing the Writ Petition.

4. Mr.U.Baranidharan, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.B.Arunbala, representing Mr.V.Anandamurthy, learned counsel appearing for the 3rd respondent submitted that the mother and sister of the 3rd respondent filed suit in O.S.No.47 of 2012 against the 3rd respondent and the petitioner, on the file of the Principal District Judge, Tiruppur and the said suit was decreed. The 3rd respondent filed A.S.No.642 of 2019 and this Court granted stay of passing final decree alone. In view of pendency of the civil Proceedings, the petitioner is not entitled to the relief sought for in the present Writ Petition.



5.Mr.U.Baranidharan, learned Additional Government Pleader appearing for the respondents 1 and 2 further submitted that due to the objections raised by the 3rd respondent, the respondents 1 and 2 are unable to execute and register the discharge receipt and prayed for dismissal of the Writ Petition.

6.Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the respondents 1 and 2 as well as learned counsel appearing for the 3rd respondent and perused the materials on record.

7.From the above materials it is clear that, the petitioner and his brother, on 26.11.1976 obtained loan from the 1st respondent by executing the registered mortgage deed. The contention of the petitioner that documents of title were returned to the petitioner and his brother on 24.08.1989 is not disputed by respondents 1 and 2 or the 3rd respondent. Once the mortgage loan is discharged fully and the respondents 1 and 2 have returned the original documents to the borrower and issued no due certificate on 11.08.2021, they are bound to execute and register the discharge receipt in the concerned Sub-Registrar Office. The suit filed by the 3rd respondent's mother and sister and First Appeal filed by the 3rd respondent relates to partition of properties among themselves in respect of the property of the said S.Natarajan, the brother of the petitioner. It has nothing to do with the claim of the petitioner. The respondents 1 and 2 are not entitled to refuse to execute and register the discharge receipt based on the objection raised by the 3rd respondent. The registration of discharge receipt will enumerate to all the parties including the 3rd respondent, his mother and sister.

8.Considering the above materials, this Court is of the view that the petitioner is entitled to the relief sought for and the impugned order passed by the 2nd respondent dated 20.10.2021 is liable to be set aside and is hereby set aside. The respondents 1 and 2 are directed to execute the mortgage discharge receipt in respect of loan Account No.2878, pertaining to mortgage deed bearing Doc.No.1398/1976 on the file of the Sub-Registrar, Avinashi, within a period of two (2) weeks from the date of receipt of a copy of this order.

9.With the above direction, the Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar



rst

To:

1. The Secretary,
Avinashi Co-operative Primary Agricultural
Rural Development Bank,
N.K.1694, Avinashi,
33, Va.Vu.Si residence,
Tiruppur District - 641 654.

2. The President,
Avinashi Co-operative Primary Agricultural
Rural Development Bank,
N.K.1694, Avinashi,
33, Va.Vu.Si residence,
Tiruppur District - 641 654.

+lcc to Mr.S.Senthil, Advocate, S.R.No.29643

+lcc to Mr.V.Anandhamurthy, Advocate, S.R.No.29822

W.P.No.24371 of 2021

AD[co]
NSK 13/05/2022