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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.24790 of 2021

1. A.Mariya Kasirajan
2. Saghaya Panimalar
3. M.Jawahar Antony Xavior ...Petitioners

-Vs-

1. The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai - 600 028.
2. The District Registrar (Administration),
Deputy Inspector General Cadre,
District Registrar Office,
North Chennai, Chennai - 600 001.
3. The Sub Registrar,
Madhavaram S.R.O.,
Madhavaram, Chennai - 600 060.
4. Mohamadullah - Assistant,
Office of the Sub Registrar,
Madhavaram, Chennai - 600 060.
5. M.Yadhavan
6. M/s. Shriram Transport Finance Company Ltd.,
Represented by its General Power of
Attorney Holder Mr.Varadhan,
No.95, 29/2, Habibullah Road,
CIT Colony, T.Nagar, Chennai - 600 017. ...Respondents



Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 3 herein to remove the Encumbrance Endorsement illegally made by respondents third and fourth under the caption viz., 26/2018, dated 13.10.2018 under the caption "Others (Court orders)" over our property bearing Door No.11/1, Lakshmi Amman Nagar, Second Sivagami Cross Street, Erukkancherry, Chennai - 600 118, based on the letter of the third respondent in Letter No.250/2018-2021 dated 09.08.2021 within a period that may be fixed by this Hon'ble Court and direct the first respondent to take action against the second and third respondents under Sections 81 and 82 of the Registration Act.

For Petitioners : Mr.S.Ravichandran Sundaresan

For R1 to R3 : Mr.Yogesh Kannadasan
Special Government Pleader

For R6 : Mr.M.Peer Mohamed

ORDER

This Writ Petition has been filed for the issuance of Writ of Mandamus, directing the respondents 1 to 3 herein to remove the Encumbrance Endorsement illegally made by respondents third and fourth under the caption viz., 26/2018, dated 13.10.2018 under the caption "Others (Court orders)" over our property bearing Door No.11/1, Lakshmi Amman Nagar, Second Sivagami Cross Street, Erukkancherry, Chennai - 600 118, based on the letter of the third respondent in Letter No.250/2018-2021 dated 09.08.2021 within a period that may be fixed by this Hon'ble Court and direct the first respondent to take action against the second and third respondents under Sections 81 and 82 of the Registration Act.

2. Heard Mr.S.Ravichandran Sundaresan, learned counsel appearing for the petitioners, Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.M.Peer Mohamed, learned counsel appearing for the sixth respondent.

3. The case of the petitioners is that the petitioners have jointly purchased the property bearing Door No.11/1, Lakshmi Amman Nagar, Second Sivagami Cross Street, Erukkancherry, Chennai - 600 118 from the fifth respondent



herein by the registered sale deed, dated 16.07.2018, registered vide Document No.4459 of 2018. Thereafter, the petitioners have also mortgaged the said property by deposit of title deeds and availed loan with Tamil Nadu Mercantile Bank Ltd. The deposit of title deeds was duly registered in the office of the third respondent registered vide Document No.1176 of 2019, dated 22.02.2019. After discharging the entire loan amount, the discharge receipt has been duly registered vide Receipt No.3482 of 2020, dated 25.08.2020. The property is free from encumbrance. Due to financial crisis, during the mid of Covid-19, the petitioner approached the Financial Institution to raise the financial assistance by mortgaging the subject property.

4. On verification of Encumbrance Certificate, the petitioners found that there is an encumbrance over the subject property made by the sixth respondent herein. The sixth respondent herein as claimant made an illegal entry under the caption of "Court orders" for recovery of loan from the fifth respondent who is the vendor of the petitioners, who availed vehicle loan, vide Document No.26 of 2018, dated 13.10.2018 before the Arbitral Tribunal. Therefore, the petitioners made representation to the respondents 1 to 3 herein to remove the encumbrance endorsement made by the respondents 3 and 4 herein and also for direction directing the first respondent to take appropriate direction as against the second and third respondents under Sections 81 and 82 of the Registration Act, 1908.

5. A perusal of the counter filed by the third respondent revealed that an interim order of attachment of the subject property in the matter of Arbitration under the Arbitration and Conciliation Act, 1996 passed by the Sole Arbitrator in the Arbitration Case No.1472 of 2018, dated 13.08.2018 was received from the Sole Arbitrator on 13.10.2018. The interim order passed by the Arbitral Tribunal is deemed to be an order of the Court and interim order of the Sole Arbitrator making attachment of the property was treated as an order for effecting attachment received under Section 89(2A) of the Registration Act, 1908 and accordingly the same was filed and indexed. Under Section 17 of the Arbitration and Conciliation Act, 1996, any order issued by the Arbitral Tribunal shall be deemed to be an order of the Court for all purposes. It shall be enforceable under the Code of Civil Procedure, in the same manner as if it were an order of the Court.



6. Therefore, there is absolutely no wrong in filing the Arbitral Award and indexing the same in the records by the fourth respondent. This Court finds no illegality made by the fourth respondent by entering the order of attachment made by the Sole Arbitrator. In fact, the said Arbitral Award has been passed as against the petitioner's vendor who availed vehicle loan, vide Document No.26 of 2018, dated 13.10.2018.

7. Therefore, there is no prima facie made out to enquire as against the respondents 3 and 4 herein under Sections 81 and 82 of the Registration Act, 1908. Further, unless the Arbitral Award is set aside, the entry made in the Encumbrance Endorsement cannot be removed.

8. Hence, the writ petition is devoid of merits and it is liable to be dismissed. However, the petitioners are at liberty to challenge the Arbitral Award in the manner known to law if so advised.

9. Accordingly, this writ petition stands dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai - 600 028.
2. The District Registrar (Administration),
Deputy Inspector General Cadre,
District Registrar Office,
North Chennai, Chennai - 600 001.
3. The Sub Registrar,
Madhavaram S.R.O.,
Madhavaram, Chennai - 600 060.



4. Mohamadullah - Assistant,
Office of the Sub Registrar,
Madhavaram, Chennai - 600 060.

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+1 CC to Mr.S.Ravichandran Sundaresan, Advocate sr 3145
+1 CC to The Government Pleader sr 3696.

W.P.No.24790 of 2021

PL(CO)
SP(08/02/2022)