



W.P.(MD)No.11304 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11304 of 2022

and

W.M.P(MD)No.8073 of 2022

Tamilnad Mercantile Bank Ltd.,
Represented by its Authorised Officer,
A.Raja,
S/o.Ayyadurai,
Thanjavur Branch,
No.56/102, Abhram Pandithar road,
Thanjavur – 613 001
Thanjavur District.

... Petitioner

Vs

1.The Sub Registrar,
Office of the Sub-Registrar (Grade-I),
Vallam,
Thanjavur District.

2.M/s.Arasu Autos,
Represented by its Partners,
No.1, Trichy Main Raod,
VOC Nagar,
Thanjavur – 613 007.

3.R.Thirunavukarasu

4.T.Dhanalakshmi

5.T.Senthilkumar

6.M.Geetha



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7.T.M.Aswinprabhu
8.T.M.Aswithalakshmi
9.P.Lenin

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records related to the impugned order issued by the first respondent dated 21.02.2022 and quash the same and consequently, direct the first respondent, Sub-Registrar Grade -I, Vallam, Thanjavur, to register the sale certificate executed by the petitioner bank in favour of ninth respondent pertaining to the schedule mentioned property.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader for R.1

No Appearance for R.3 to R.6

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the first respondent.

2. Though the other respondents have been served and their names have been printed in the cause title, they have not chosen to enter appearance.

3. The writ petitioner is a scheduled Bank. The second respondent herein availed loan from the writ petitioner. The respondents 3 to 8 were the



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guarantors. They deposited the title deeds and created equitable mortgage. The loan was not repaid. The account became a non-performing asset. The petitioner, therefore, invoked the provisions of the SARFAESI Act and brought the mortgaged properties / secured assets to auction sale. The auction sale was held on 17.11.2021. The ninth respondent herein purchased the properties. When the sale certificate was presented for registration before the first respondent, the registering authority took the stand that in the registered memorandum of deposit of title deeds, the Survey Number has been mentioned as 157/3 part. But in the sale certificate, the Survey Number has been mentioned as 153/7 part. Since there is a discrepancy between the memorandum of deposit of title deeds and the sale certificate, the registering authority declined to register the document in question. They issued the impugned refusal check slip dated 21.02.2022. Challenging the same, the writ petition has been filed.

4. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to direct the registering authority to register the sale certificate as prayed for.



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5. Per contra, the learned Additional Government Pleader appearing for the first respondent submitted that the registering authority was justified in declining to register the petition mentioned document.

6. I carefully considered the rival contentions and went through the materials on record.

7. The petitioner / Bank had invoked the power conferred on it by SARFASI Act and brought the petition mentioned properties to sale. The auction sale notification dated 07.08.2021 contains the following description of the properties as follows:

“Description of the Property: 2

Vacant residential land to the total extent of 5260 sq.ft (1200 sq.ft. in Plot No.62, 1660 sq.ft. in Plot No.63, 1200 sq.ft. in Plot No.64 and 1200 sq.ft. in Plot No.65) in S.No. 153/7 Part at Shanthini Nagar Layout, Pillaiyarpatti Vattam & Village, Thanjavur District, standing in the name of Late.Mr.T.Murugan and succeeded by Mrs.Geetha, Mr.T.M.Aswin Prabu, Ms.M.Ashwitha Lakshmi and Mrs.T.Dhanalakshmi as Legal heirs.”



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8. The sale certificate is in consonance with the auction sale notification.

Now, the only question that arises for consideration, is whether on account of the discrepancy in the survey number between the memorandum of deposit of title deed and the sale certificate, the sale certificate can be declined to be registered. It is well settled that the erroneous mentioning of the survey number will not vitiate any transaction. The Court will go essentially by the four boundaries descriptions.

9. In this case, the identity of the property is not in dispute. The memorandum of deposit of title deeds is only an evidence of creation of mortgage. What is important is the description set out in the parent title documents. In the parent title documents, the survey number has been mentioned only as 153/7 part. Looked at from any angle, the stand of the first respondent is unsustainable. In view of the consonance in the matter of description between the parent title document, the auction sale notification and the sale certificate, the impugned order is quashed. The parties are permitted to re-present the petition mentioned sale certificate. The first respondent is directed to entertain the same and register it subject to the fulfilment of the other formalities.



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10. This writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

13.07.2022

Index : Yes / No
Internet : Yes/ No
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To

The Sub Registrar,
Office of the Sub-Registrar (Grade-I),
Vallam,
Thanjavur District.



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G.R.SWAMINATHAN, J.

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