



W.P(MD)No.18059 of 2015

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.18059 of 2015

and

M.P(MD)Nos.1 to 3 of 2015

State Bank of India,
Represented through its Chief Manager /
Authorized Officer,
SME Siruthozhil Branch,
No.9D-1, Ramakrishnapuram,
Karur-639 001.

... Petitioner

Vs.

1.The District Registrar,
District Registrar Office,
Karur.

2.The Sub Registrar,
Mela Karur,
Karur District.

3.P.N.Sivasamy
4.S.Vijayalakshmi
5.S.Navaneethan
6.S.Prem
7.J.T.Knitts
8.R.Kumaran

... Respondents



W.P(MD)No.18059 of 2015

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned check slip issued by the second respondent herein in No.1/January, dated 07.01.2015 and quash the same and further direct the respondents 1 & 2 herein to register the sale certificate, dated 13.11.2014, executed by the petitioner bank in favour of eighth respondent herein in respect of the land and buildings in Survey No.150/6 to an extent of 1155 Sq.Ft in Periyar Nagar, Ward No.13, Vengamedu, Karur Taluk & District.

For Petitioner : M/s.V.Meenakshisundaram

For R-1 & R-2 : M/s.K.S.Selvaganesan
Additional Government Pleader

For R-3 : M/s.P.R.Prithiviraj
for M/s.D.Sadiq Raja

For R-4 to R-7 : No appearance

For R-8 : M/s.V.Sukumar

ORDER

The present Writ Petition has been filed challenging a check slip issued by the second respondent herein, under which, he has refused to register a sale certificate issued by the petitioner in favour of the eighth respondent herein.



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2. According to the learned Counsel for the petitioner, respondents 3 to 6 have borrowed money from the writ petitioner Bank and they have also executed a registered, Memorandum relating to deposit of title deeds on 02.05.2013. Since the monthly installments were not regularly paid, the loan account was declared as NPA even in the year 2013 itself. Thereafter, the property was brought to auction on 02.09.2014 under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. The sale had taken place and the same was confirmed on 08.10.2014. A sale certificate was issued in favour of the eighth respondent herein on 29.10.2014.

3. When the eighth respondent attempted to register the said sale certificate before the second respondent, the second respondent had passed the impugned order, refusing to register the said sale deed. The ground that is alleged in the refusal order is that, already the property in dispute has been attached by a civil Court in I.A.No.111 of 2014 in O.S.No.65 of 2014 by an order, dated 01.04.2014. This order is under challenge in the present writ petition.



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4. According to the learned Counsel for the petitioner Bank, the Memorandum of Deposit of title deeds has been registered in relation to the property in dispute on 02.05.2013 itself. Only thereafter, the civil suit has been filed and an order of attachment before judgment has been passed on 01.04.2014. Hence, according to the learned Counsel for the petitioner, the petitioner being a secured creditor he has got priority over all the debts and hence, the sale certificate executed by the petitioner Bank in favour of the eighth respondent has to be registered by the second respondent herein.

5. The learned Counsel for the petitioner has further contended that though the property in dispute was also subject matter of attachment by the civil Court along with other properties, the property in dispute was not sold by the civil Court and hence, no further encumbrance has been created over the property covered in the sale certificate. The learned Counsel appearing for the third respondent, who is the plaintiff / decree holder in O.S.No.65 of 2014 also confirms that the property covered in the sale certificate has not been sold in the civil Court auction.



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6. The learned Counsel appearing for the writ petitioner has brought to the notice of the Court the Hon'ble Full Bench of this Court reported in **2016 (6) CTC page 769 (The Assistant Commissioner (CT) Vs. The Indian Overseas Bank**. As per the judgment of the Hon'ble Full Bench, the rights of the secured creditor to realise the secured debts due and payable by sale of the assets over which the security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. In the present case, only the attachment before judgment order passed by the civil Court is cited as an impediment for registering the sale certificate. Hence, it is clear that this attachment order has emanated only from a private dispute and it is not a statutory due. That apart, the civil suit has been filed one year after the Memorandum relating to deposit of title deeds has been registered. The Memorandum of Deposit has been registered on 02.05.2013 and an order of attachment before judgment has been effected only on 01.04.2014 in I.A.No.111 of 2014 in O.S.No.65 of 2014 on the file of the Sub Court, Karur and hence the same will not be binding upon the writ petitioner or the eighth respondent herein.



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7. In view of the above said facts, the order impugned in the writ petition is set aside. The second respondent is directed to register the sale certificate issued by the petitioner in favour of the eighth respondent.

8. With the above said observation, the writ petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

15.11.2022

Index : Yes / No
Internet : Yes / No
btr

To

1.The District Registrar,
District Registrar Office,
Karur.

2.The Sub Registrar,
Mela Karur,
Karur District.



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R.VIJAYAKUMAR, J.

btr

Order made in
W.P(MD)No.18059 of 2015

15.11.2022