



WEB COPY

W.P.No.20506 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20506 of 2023

and

W.M.P.No.19902 of 2023

S.M.Sudharsankrisna

... Petitioner

Vs.

1.The Joint Sub Registrar (No.2),
Salem West,
Salem.

2.Mr.J.Mathivanan

3.M/s.Tata Capital Housing Finance Limited,
represented by the Authorised Officer,
Centennial Square 1st Floor,
6A, Dr.Ambedkar Salai,
Kodambakkam, Chennai – 600 024.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, declaring that the Memorandum Relating to Deposit of Title Deeds (Mortgage Deed) bearing Document No.3486/2017 dated 05.12.2017 on the file of respondent No.1 is null and void.



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For Petitioner : Mr.M.Radhakrishnan

For R1 : Mr.D.Ravichander
Special Government Pleader

ORDER

The writ of declaration has been instituted to declare the Memorandum Relating to Deposit of Title Deeds (Mortgage Deed) bearing Document No.3486/2017 dated 05.12.2017 on the file of respondent No.1 is null and void.

2. The petitioner states that he is the absolute owner of the subject property more fully described in the present writ petition.

3. The petitioner executed a sale deed in favour of the 2nd respondent on 29.11.2017 selling the land belonging to the petitioner. The 2nd respondent in turn executed a mortgage in favour of the 3rd respondent.

4. The learned counsel for the petitioner mainly contended that the petitioner executed a sale in favour of the 2nd respondent only in respect of the land measuring 2025 sq.ft. and there is no mention about the building situated in the said land. However, the 2nd respondent by suppressing the



schedule of property in the sale deed executed by the petitioner subsequently executed the mortgage deed in favour of the 3rd respondent by inserting the building in the schedule of property found in the mortgage deed.

5. The learned counsel for the petitioner reiterated that the 2nd respondent has committed a fraud by including the building belonging to the petitioner in the schedule of properties stated in the mortgage deed executed by him. Thus, it is a fraud apparent and therefore, the mortgage deed is to be declared as null and void.

6. It is not in dispute that the 3rd respondent invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 against the 2nd respondent and attaching the property. The petitioner states that he is in possession of the building. Therefore, the mortgage deed is to be declared as null and void.

7. The complex nature of facts as presented by the petitioner cannot be adjudicated in a writ proceeding, in view of the fact that the petitioner himself states that he sold the land, where the building is also situated. When the land has been sold by the petitioner to the 2nd respondent, how the petitioner is in



possession and enjoyment is also to be considered by this Court.

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8. A doubt arises, whether there is any understanding between the petitioner and the 2nd respondent or not. If at all any such understanding, then that is to be enquired into and further the genuinity of the sale deed executed by the petitioner and selling the land excluding the building itself is a doubt. All these aspects are to be investigated, if at all the aggrieved person approaches the competent authority.

9. That apart, the learned Special Government Pleader appearing on behalf of the 1st respondent raised an objection by stating that the 2nd respondent executed the mortgage deed in respect of the 3rd respondent and therefore, the writ petitioner cannot be construed as an aggrieved person. Thus, the writ petition is not entertainable.

10. The learned counsel for the petitioner states that the petitioner is in possession of the building though he sold the land to the 2nd respondent. The nature of transactions between the writ petitioner and the 2nd respondent seems to be not in accordance with law and therefore, it is for the aggrieved persons to initiate all appropriate actions. If at all there is any understanding



that prevails between the petitioner and the 2nd respondent, the petitioner has to approach the appropriate Forum in the manner contemplated under Law.

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11. With these clarifications, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.07.2023

Jeni
Index : Yes
Neutral Citation : Yes
Speaking order

To

The Joint Sub Registrar (No.2),
Salem West,
Salem.



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S.M.SUBRAMANIAM, J.

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