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W.P.No.320 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.320 of 2023

M/s.Shriram Housing Finance Limited,
Registered office at
123, Angappa Naicken Street,
Chennai - 600 001.

Head Office at
Level 3, Wockhardt Towers,
East Wing Bandrakurla Complex,
Mumbai - 400051

Having branch office at
Meenakshi Towers No.13 Rajamannar Street,
Ground floor, T.Nagar, Chennai - 600 017
Represented through its authorized officer
Mr.S.Selvin Singh

...Petitioner

Vs

The Sub Registrar,
Purasawalkam Sub-Registrar Office,
Chennai

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent to consider the request and allow the petitioner to modify the schedule of property in the Mortgaged deed dated 04.07.2016 registered as Doc.No.3304 of 2016.



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For Petitioner : Mr.V.Balasubramani
For Respondent : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This Writ Petition has been filed for a direction to the respondent to consider the request of the petitioner and to allow the petitioner to modify the schedule of property in the Memorandum of Deposit of Title Deed (MoDTD) dated 04.07.2016, registered as Doc.No.3304 of 2016.

2.Heard Mr.V.Balasubramani, learned counsel for the petitioner and Mr.Yogesh Kannadasan, learned Special Government Pleader appearing on behalf of the respondent.

3. The property situated at Door No.17, Ponnappa Mudali Street, Purasawalkam Village, Perambur Village, Chennai - 600 084 comprised in Old S.No.373 (part), R.S.No.668 (Part) within the Sub-Registration of Purasawalkam and Registration District of Central Chennai, that stood in the name of one Fathima Begum, was mortgaged with the petitioner herein through a MoDTD in



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Doc.No.3304/2016 on 04.07.2016. Owing to the default committed by the mortgagor, the property was brought for sale through an auction under the provisions of the SARFAESI Act.

4. On 03.10.2022, a sale confirmation letter was issued by the petitioner to one A.Ashraf Basha. At this stage, the petitioner had noticed that the mortgaged property carries a total extent of 567 sq.ft only, whereas in the MoDTD, the total extent of the property is 621 sq. ft. It is the case of the petitioner that their request to modify the total extent of the land in the schedule to the MoDTD has been denied by the respondent on the ground that the original mortgagor alone can make such request. In this background, the present writ petition has been filed.

5. The learned counsel for the petitioner submitted that it is impossible for them to request the mortgagor for execution of a rectification deed, since he may not co-operate for execution of the Rectification Deed after having lost his property and therefore, the genuine mistake committed by them in the total extent of the property in the MoDTD, should not cause prejudice to the auction purchaser.



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6. The learned Special Government Pleader submitted that there is no provision either under the Registration Act, 1908 or under the Rules, to permit such modification on the request of the mortgagee and it is for the mortgagor alone, who can seek for rectification of the portion of the schedule of the property in the MoDTD.

7. A certified copy of the Sale Deed No.3529 of 2001, dated 29.10.2001 standing in the name of the mortgagor namely, Fathima Begum has been produced before this Court. On perusal of the schedule therein, it would reveal that the mortgagor had sold 1/4th of her property situated at Door No.17, Ponnappa Mudali Street, Purasawalkam Village, Perambur Village, Chennai - 600 084 comprised in Old S.No.373 (part), R.S.No.668 (Part), within the Sub-Registration of Purasawalkam and Registration District of Central Chennai, from the total extent of 756 sq. ft., i.e., an extent of 189 sq. ft, out of the total extent of 756 sq. ft has been sold. Thereafter, the mortgagor would hold title over 567 sq. ft. (756 sq. ft. - 189 sq.ft.) alone in the subject property. However, in the MoDTD, the extent of the property that has been mortgaged, has



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been shown as 621 sq. ft., which is over and above the mortgagor's title over 567 sq. ft.

8. The submission of the learned counsel for the petitioner, that the mortgagor / defaulter is not cooperating with the petitioner in executing the Rectification Deed, seems to be acceptable. Likewise, the refusal on the part of the Registration Authorities to modify the extent of the land without the mortgagor's request also cannot be found fault with, since there is no such provision either under the Registration Act or the Rules therein. However, the fact remains that the auction purchaser, who had purchased the property for a sum of Rs.75,20,000/- on 03.10.2022 is now put into a precarious situation, whereby a valid and perfect title has been denied to him in view of the mistake committed on the part of the petitioner in describing the total extent of the subject property in the MoDTD. In these extraordinary circumstances, I am of the view that the powers of this Court under Article 226 of the Constitution of India could be invoked to secure justice to both the petitioner, as well as the auction purchaser, by directing the authorities to modify the extent of the land in the MoDTD, without insisting for a Rectification Deed from the mortgagor.



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9. In the light of the above observations, there shall be a direction to the respondent herein to act upon the petitioner's application dated 27.10.2022, by altering the total extent of the land as 567 sq. ft. instead of 621 sq.ft. to the schedule of the property in the Memorandum of Deposit of Title Deed, dated 04.07.2016 registered as Doc. No.3304 of 2016. Such rectification shall be carried out, at least within a period of one week from the date of receipt of a copy of this Order. Consequently, the petitioner is at liberty to approach the respondent seeking for registration of the Sale Certificate, which application shall be considered positively and the registration shall be carried simultaneously with the aforesaid rectification of the MoDTD dated 04.07.2016.

10. With the aforesaid observations and directions, this Writ Petition stands disposed of. There shall be no order as to costs.

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Index:Yes

Neutral Citation:Yes

Speaking order

DP/nl

Note:Issue order copy on 31.03.2023



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To

The Sub Registrar,
Purasawalkam Sub-Registrar Office,
Chennai



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M.S.RAMESH. J,

DP/nl

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