BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12780 of 2015

Kannabiran ... Petitioner

Vs.

1.The Regional Manager,
Central Bank of India,
Raja Muthaiah Mandram Building,
Madurai.

2.The Branch Manager,
Central Bank of India,
Dindigul Branch,
Dindigul District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the Respondents herein to return the sale deed dated 21.10.2005 in respect of the property in Plot No. 7 comprised in Survey No. 520/3 at Seelapadi Village, Dindigul Taluk, Dindigul District which is deposited by one Vijayakumar, Son of Veeramani as collateral security to his loan Account No. 1503157410 to the Petitioner as agreed by the Respondents herein within the time stipulated by this Court.

For Petitioner : Mr.Lawrance

For Respondents : Mr.Rajesh Saravanan for R1
: No appearance for R2

ORDER

Heard the learned counsel on either side.

2. One Vijayakumar sold the petition mentioned property in favour of the petitioner in the year 2011. The said Vijayakumar had mortgaged the property with the respondent bank. He had deposited the original sale deed dated 21.10.2005. The mortgage amount has since been paid. The petitioner having stepped into the shoes of the mortgagor sought return of the document. The respondent refused. That led to filing of this writ petition.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The learned standing counsel appearing for the bank submitted that Vijayakumar had stood as a guarantor for yet another transaction. It is true that the said mortgage account had been settled.

But under Section 171 of the Indian Contract Act, the banker is entitled to have lien over the deposited security. Unless the other transaction in which the petitioner's vendor is figuring as guarantor is cleared, the petitioner's request cannot be accepted. The learned standing counsel pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. It is true that the petitioner's vendor had guaranteed the loan availed by one V.R.Senthilkumaran from the Central Bank of India. The Central Bank of India filed O.S.No.304 of 2010 on the file of the District Judge, Dindigul for foreclosing the mortgage. The defendants V.R.Senthilkumaran and V.Vijayakumar remained exparte. Preliminary decree was passed on 10.06.2014. The petitioner's counsel would argue that since the final decree petition was not filed within three years, the bank had lost its right. The learned counsel for the petitioner relied on the decision reported in ***2017-2-Writ L.R.584 (M.Shanthi Vs.Bank of Baroda represented by its Chief Manager, Namakkal Branch, Namakkal).*** Paragraph No. 30,31&32 reads as follows:-

"30.Section 60 of Transfer of Property Act, speaks about specific rights of mortgagor. It is clear that every mortgagor is entitled to collect the mortgage deeds and all other documents relating to the mortgaged properties, which are in the possession or power of mortgagee. This right of mortgagor is certainly a legal enforceable right. The mortgagee is under an obligation to return the title deeds upon payment of the entire money due. This legal obligation gives an enforceable right in favour of the mortgagor in connection with the mortgage. This legal obligation of the mortgagee to return the title deed to the mortgagor upon discharge of mortgage loan for which the title deeds were secured, can be certainly treated as an implied contract contrary to Section 171 of Indian Contract Act.

31.Hence this Court is of the firm view that the respondent bank cannot exercise right of lien to secure any other liabilities of the mortgagor by retaining the documents of the mortgaor or guarantor, which are deposited with an intention to secure a particular loan transaction. Lien is primarily considered as a right to retain security. It is doubtful whether in exercise of such right to retain the title deeds the mortgagee can bring the property for sale for recovery of some debt which is due from the mortgagor in connection with a different transaction, which is not covered by the mortgage.

32. Any agreement conferring a right upon anyone to bring the property which is offered as a security for a loan transaction, is considered to be a transaction creating a right in immovable property and such agreement namely mortgage can be executed by way of a registered instrument. The right of lien, under Section 171 of the Indian Contract Act, will be contrary to

> the provisions of Transfer of Properties Act, if Section 171 is also made applicable to the title deeds, which are offered as a security in relation to a particular transaction. Considering the scope of Section 60 of the Transfer of Property Act and the scope and object of Section 171 of the Indian Contract Act, this Court is of the firm view that the respondent Bank cannot retain the title deeds or proceed with the properties which were offered as security in relation to an independent loan transaction, even after the borrower discharged the entire liability of borrower in connection with the loan which is secured by deposit of title deeds."

He also relied on the decision reported in ***(2023) 3 MLJ 464 (State Bank of India Vs. Thilagavathi Traders).***

6. The mortgage transaction between Vijayakumar on the one hand and the bank on the other can be read as a contract to the contrary. Therefore, the banker cannot exercise the right of lien available under Section 171 of the Indian Contract Act in the facts and circumstances of the case. The respondents are directed to return the petition mentioned original sale deed to the petitioner immediately and without any delay.

G.R.SWAMINATHAN, J.

rmi

7. The writ petition is allowed. No costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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