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W.P.No.5638 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.5638 of 2024

K.Ayyavoo

...

Petitioner

versus

1.The Sub-Registrar,
Rasipuram SRO,
Rasipuram,
Namakkal District.

2.A.Saravanan

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Refusal Check Slip in RFL/Rasipuram/29/2024 dated 15.02.2024 passed by the first respondent, quash the same and consequently direct the first respondent to register the Partition Deed dated 15.02.2024 presented by the petitioner and his two sons.

For Petitioner : Mr.N.Manokaran

For Respondent No.1 : Mr.P.Anandhakumar
Government Advocate

For Respondent No.2 : Mr.R.Nalliyappan



ORDER

This Writ Petition has been filed challenging the refusal slip dated 15.02.2024 issued by the first respondent, whereby he refused to register the Partition Deed presented by the petitioner for registration.

2. Counter has been filed by the first respondent to the effect that, since the order of the Civil Court was served on them, they refused to register the Partition Deed. As per Section 22-B of the Registration Act, 1908, no document could be registered in respect of the property which is attached permanently or provisionally by a competent authority. Hence, it is submitted that the refusal slip is valid in the eyes of law.

3. Though the attachment is a bar for registration of documents under Section 22-B, this Court, considering the various decisions in this regard, has analysed Section 22-B and dealt the matter in ***Subramani Vs. The Sub-Registrar in W.P.No.11056 of 2024 dated 26.04.2024*** wherein it is held as follows:-



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“27. Similarly, a Division Bench of this Court in the case of K.Balachandran v. A.M.Muthyyan Mudaliar reported in (1974) 87 LW 812, held as follows:-

“It is abundantly clear that neither S. 64 of the Code nor the corresponding provision in the earlier enactments made private alienation void for all purposes. S. 64 specifically says that the transaction is void only as against all claims enforceable under the attachment. As pointed out in the first of the cases quoted above a private alienation when an attachment is in force is, not void against the whole world.”

4. Similarly, this Court, in ***Palanivel Vs. Registrar*** reported in ***2021 (5) MLJ 715*** has held as follows:-

“18. In MANU/SC/0024/1985 : (1985) 2 SCC 167 (supra), the Hon'ble Supreme Court has held as under:

30. The consequence of attachment of certain shares of a company held by a share holder for purposes of sale in a proceeding under Section 149 of the Land Revenue Act is more or less the same. The effect of an order of attachment is what Section 149 of the Land Revenue Act itself says. Such attachment is made according to the law in force for the time being for the attachment and sale of movable property under the decree of a civil court. Section 60 of the Code of Civil Procedure, 1908 says that except those items of property



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mentioned in its proviso, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities of money, debts, shares in a corporation and all other saleable property, moveable or immovable, belonging to a judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor, or by another person in trust for him or on his behalf, is liable for attachment and sale in execution of a decree against him. Section 64 of the Code of Civil Procedure, 1908, states that where an attachment of a property is made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment. What is forbidden under Section 64 of the Code of Civil Procedure is a private transfer by the judgment-debtor of the property attached contrary to the attachment, that is, contrary to the claims of the decree holder under the decree for realization for which the attachment is effected. A private transfer under Section 64 of the Code of Civil Procedure is not absolutely void, that is, not void as against all the world but void only as against the claims enforceable under the attachment. Until the property is actually sold the judgment



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debtor retains title in the property attached. Under Rule 76 of Order 21 of the Code of Civil Procedure, 1908, the shares in a corporation which are attached may be sold through a broker. In the alternative such shares may be sold in public auction under Rule 77: thereof. On such sale either under Rule 76 or under Rule 77, the purchaser acquires title. Until such sale is effected, all other rights of the judgment debtor remain unaffected even if the shares may have been seized by the officer of the court under Rule 43 of Order 21 of the Code of Civil Procedure, 1908 for the purpose of effecting the attachment, or through a Receiver or through an order in terms of Rule 46 of Order 21 of the Code of Civil Procedure may have been served on the judgment debtor or on the company concerned.

19. The dictum laid down in the above judgment MANU/SC/0024/1985 : (1985) 2 SCC 167 (supra), gives a fitting answer to the issue raised in this writ petition. So far as the order of attachment passed by the DRT is concerned, the transfer is not void generally but it is void only as against the claims enforceable under the said attachment. Therefore, I am of the opinion that the sale of the property attached cannot be construed as illegal sale. However, if the 2nd respondent bank exercises its right as against the property, the petitioner; cannot raise any objection because the sale of the vendor in favour of the petitioner is void in respect of the order of



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attachment obtained by the 2nd respondent bank. So, even if the property is sold in favour of the petitioner, the 2nd respondent bank can always exercise its right as against the said property.

20. In view of the above finding, I am of the opinion that the sale of the subject property pending the order of attachment is void only as against the claims enforceable under the order of said attachment and not in respect of other claims. Therefore, the sale of the property, which is under attachment, cannot be said as illegal. In the light of what is stated above, the writ petition is allowed and the 1st respondent-Sub Registrar, Kochiadai, Madurai, is directed to release the registered document in favour of the petitioner within a period of one week from the date of receipt of a copy of this order. No costs."

5. In such view of the matter, mere entering into the partition in respect of the attached property will not take away the rights of the parties in whose favour the attachment order is passed. Sale or any alienation in respect of the property that was attached is void only as against the enforceable nature of attachment, which is the object of Section 64 of the C.P.C. Therefore, mere registering the partition deed will not take away the



rights of the private respondent, who obtained the attachment order, in the event they succeed in the suit to proceed to recover the amount.

6. In the result, this Writ Petition is allowed and the impugned order of refusal slip dated 15.02.2024 stands quashed and the first respondent is directed to register the Partition Deed presented by the petitioner, if it is otherwise in order, as per law, within a period of one month from the date of receipt of a copy of this order. No costs.

06.06.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri

To

The Sub-Registrar,
Rasipuram SRO,
Rasipuram,
Namakkal District.



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N.SATHISH KUMAR, J.

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