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W.P. No.27334 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.27334 of 2023

S.P.Parasuraman

... Petitioner

Vs

1.The District Registrar
Department of Registration
Dharmapuri Town
Dharmapuri District - 636 701

2.The Sub Registrar
Department of Registration
Karimangalam Town
Dharmapuri District - 635 111

3.The Deputy Registrar of Co-operative Societies
District Collector's Office Campus
Dharmapuri - 636 705

4.The Management
K.K.25 Modur Primary Agricultural and
Co-operative Credit Society
Karimangalam, Dharmapuri District
(R4 suo motu impleaded vide order
Dt.12.09.2023 by SMSJ)

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus by calling for the records of the 2nd respondent in Na.Ka. No.178-1/2023 dated 24.07.2023 and to quash the same as illegal and without jurisdiction, consequently, direct the 2nd respondent to register the civil court judgment and decree in O.S. No.221 of 2017 dated 09.10.2020 made on the file of the Subordinate Judge, Palacode and to remove the encumbrances entered on its file based on the 3rd respondent's attachment proceeding in Na.Ka. No.2940/2015/sapa1 dated 05.08.2015 following the circular issued by the Inspector General of Registration, Chennai in Na.Ka. No.34930/C1/2019 dated 27.02.2023.

For Petitioner : Mr.M.Sathiaseelan

For Respondents : Mr.L.S.M.Hasan Fizal
Addl. Govt. Pleader for R1 to R4

ORDER

Challenge has been made to the impugned order of the 2nd respondent in refusing to register the civil court judgment and decree in O.S. No.221 of 2017 dated 09.10.2020 and to remove the entries made in the encumbrance.

2. The petitioner is the absolute owner of the property. One Sahadevan is the grandson of the petitioner, who was the Secretary of the 4th respondent Co-



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operative Society at the relevant point of time. However, the absolute property of the writ petitioner has been attached in a surcharge proceeding initiated against his grandson by the Co-operative society. Challenging the same, the writ petitioner has filed a suit in O.S. No.221 of 2017 on the file of the learned Subordinate Judge, Palacode, wherein the Co-operative Society was also been made as a party. After contest, the suit was decreed on 09.10.2020. Based on the decree, when the petitioner presented a settlement deed and also requested to remove the entries relating to the attachment in the encumbrance, the document was not registered by the second respondent. On the contrary, the impugned order has been passed as if the Sub Registrar has no power to remove the entries in the encumbrance. Challenging the same, the present writ petition has been filed.

3. The second respondent has filed a counter affidavit admitting that they are ready to register. However, in view of Rule 55-A of the Registration Rules, they may not be in a position to register the document. It is the further contention of the second respondent that a 'No Objection' also has to be obtained from the authorities in respect of the attachment.



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4. The third respondent has also filed a separate counter affidavit. It is the contention of the third respondent that in the surcharge proceedings, the attachment order has been passed and that the suit filed by the writ petitioner is not maintainable. Therefore, the question of lifting the attachment did not arise at all. The tenor of the counter filed by the third respondent in fact is a contempt. When the parties to the suit contested the suit and a judgment and decree were passed, and if the third respondent is aggrieved by any order or judgment, they ought to have filed an appeal. Instead they have filed a counter in this court.

5. Be that as it may, when the competent civil court has passed a judgment and decree and also set aside the attachment order, now the third respondent has contended in this writ petition that the suit is not maintainable as against the order passed under Section 87 of the Tamil Nadu Co-operative Societies Act. When the competent civil court has gone into the title of the property and decided the issue finally and the same has reached finality and it has not been challenged before any court, the stand of the third respondent cannot be sustained in the eye of law.



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6. Insofar as the impugned order is concerned, when the civil court determined the right of the writ petitioner and also annulled the attachment, now it cannot be said that the decree and judgment cannot be registered. When the decree and judgment of the competent court are produced before the Sub Registrar, it is the duty of the Sub Registrar to register the same. In such view of the matter, there is a direction to the Sub Registrar, Karimangalam Town, Dharmapuri District, to register the judgment and decree of the learned Subordinate Judge, Palacode dated 09.10.2020 made in O.S. No.221 of 2017, within a period of 10 days from the date of receipt of a copy of this order. Since the document has been registered, mere reflecting the attachment will not make any adverse effect, since the same has already been nullified by the decree of the civil court.

7. With the above observations, the writ petition is disposed of. No costs.

14.06.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

Asr



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N.SATHISH KUMAR, J.

At the instance of the learned counsel appearing for the petitioner, this matter has been listed today, under the caption “for being mentioned”.

2. The learned counsel appearing for the petitioner submitted that in the 2nd and 3rd sentences of the second para of the order dated 14.06.2024, it is wrongly mentioned as “grandson” of the petitioner, instead of “son” of the petitioner. Hence, the learned counsel seeks rectification of the said mistake.

3. Accepting the above submission of the learned counsel for the petitioner, the Registry is directed to make the necessary correction and issue fresh order copy to the parties concerned.

25.06.2024

gya