



W.P.No.36254 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.36254 of 2023

M/s. Tamilnad Mercantile Bank Ltd.
Rep. by its Branch Manager
Erode Branch, having office at
KMP Towers, No.41, Theppakulam Street
Erode 638 001.

.. Petitioner

Vs.

1. The Sub Registrar
Erode, Erode District.

2. M/s. Sundaram Finance Limited
Rep. by its Authorised Officer
No.21, Patullous Road
Chennai 600 002.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of Mandamus directing the 1st respondent to delete/efface the entry of attachment order dated 16.06.2016, registered as Doc.No.L.No.30/2016 dated 20.07.2016 of the property mentioned in the schedule of the writ petition from the Certificate of Encumbrance



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on property and consequently, direct the 1st respondent to register the sale certificate dated 29.06.2016.

SCHEDULE OF PROPERTY

Erode Registration District, Erode Sub Registration District, Erode Taluk, outside to the Erode Municipal Limit, 33 Thindal Village, Old SF No.48/3, Re.S.No.166/4 in this land after formed into house sites and roads. These house site Nos.3 and 4 measuring 6400 sq.ft. vacant house site within following boundaries:

To the West of 25 ft. width north south road

To the East of Rajam @ Subbayammal land

To the North of Rajam @ Subbayammal house site No.5

To the South of house site Nos.2 belongs to Rajam @ Subbayammal land.

Measuring

East West on the North 78 feet

East West on the South 82 feet

North South on the East 80 feet

North South on the West 80 feet

With 1150 sq.ft. 3 floor RCC buildings, with all door and door fittings, electric service connection, both room and latrine, drinking water connection and electric motor, borewell 1-1/2 HP electric motor and pumpset and 423 sq.ft. Car parking etc.

This property situated in 33 Tindal Panchayat Limit in Re.S.Ward No.166/4 Neelas Residency bearing Door No.T-1, The



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Property tax Assessment No.2701 Electric Service Connection No.006-001-990.

For the Petitioner : Mr.V.Chandrasekaran

For the Respondents : Mr.K.Karthik Jegannath
Government Advocate
for Respondent-1

Mr.S.Suresh
for Respondent-2

ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.V.Chandrasekaran, learned counsel for the petitioner, Mr.K.Karthik Jegannath, learned Government Advocate for the first respondent and Mr.S.Suresh, learned counsel for the second respondent.

2. The present writ petition is filed seeking directions against the first respondent to delete/efface the entry of attachment order dated 16.06.2016 registered as document No.L.No.30/2016 dated 20.07.2016 of the property as detailed in the petition, i.e. Old SF No.48/3, Re.S.No.166/4 of an extent of 6400 sq.ft. at 33, Thindal



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3. It is the contention of the learned counsel for the petitioner that the petitioner is the secured creditor. The security interest is created in respect of the subject writ property by way of equitable mortgage on 07.06.2011 and the same is registered with the Central Registry of Securitisation Asset and Reconstruction and Security Interest of India on 25.08.2011. In view of Section 26E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the petitioner has priority charge and the attachment pursuant to an arbitration award in favour of the second respondent would be subservient to the charge of the petitioner. The petitioner would have a priority charge.

4. The petitioner has produced on record the details of security interest registered with the Central Agency as required under the provisions of the SARFAESI Act. Section 26E gives the priority charge to the petitioner. The order of attachment pursuant to an award would not prevail over the security interest of the petitioner. Reference can



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be had to the judgment of the Supreme Court in the case of **Kotak Mahindra Bank Limited v. Girnar Corrugators Private Limited [(2003) 3 SCC 210]**. We have also followed the said judgment in W.P.No.19742 of 2023 with connected writ petitions under order dated 27.09.2023.

5. According to learned counsel for the petitioner, even after the sale of the secured asset, the entire amount due to the petitioner is not recovered from the borrower.

6. In the light of the settled proposition of law, we pass the following order:

“The petitioner has priority charge over the claims of the second respondent. In case there is no other impediment, then, the first respondent shall not refuse to register the sale certificate only on the ground that the order of attachment is in favour of the second respondent. The entry of the attachment shall, as such, be cancelled.”



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7. The writ petition is, accordingly, allowed. There shall be no order as to costs.

(S.V.G., CJ.)

(D.B.C., J.)

19.01.2024

Index : Yes/No
Neutral Citation : Yes/No

kpl

To

The Sub Registrar
Erode
Erode District.



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