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W.A.No.3590/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 18-01-2024

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.3590 of 2023

Stella Mary

...

Appellant

-VS-

1.The Inspector General of Registration,
No.100, Santhome High Road,
Mylapore, Chennai -4.

2.The Sub-Registrar,
Sub-Registrar Office,
Thandarampattu,
Tiruvannamalai.

...

Respondents

Appeal under Clause 15 of the Letters Patent against the order, dated
16.10.2023, passed in W.P.No.29855 of 2023.

For Appellant : Mr.M.Selvam

For Respondents : Mr.P.Anandakumar,
Govt.Advocate.



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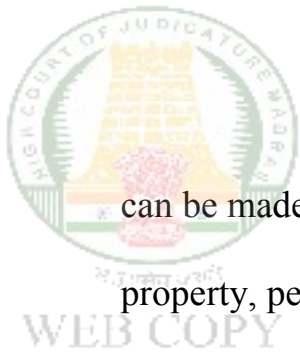
JUDGMENT
(By *S.Vaidyanathan,J.*)

This appeal has been preferred against the order of the learned single Judge, dated 16.10.2023, passed in W.P.No.29855 of 2023, permitting the appellant/parties to work out their remedy before the appropriate forum, as the Court felt that there is an attachment and, that, unless the order of attachment is raised, the Sub-Registrar may not be in a position to register the document.

2. Appellant drew the attention of this Court to a decision of this Court in W.P.No.36079 of 2015, dated 04.03.2016, wherein Paragraph 8 reads as under :

"8. Thus, it is crystal clear that it is well settled principle of law that the order of attachment cannot be a bar to register the document. Therefore, I am of the view that there is no need for this petitioner to file an appeal. 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, I am of the opinion that the sale of the property attached cannot be construed as illegal sale."

3. On reading of Paragraph 7 of the said order, what comes to be known is, that, in so far as the properties, which are not attached, alone, document can be registered. From the observation made in Paragraph 8, it is seen that sale of property



can be made even though there is an attachment. It is held therein that 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.

4. The Division Bench decision, relied upon by the appellant, in W.P.No.674 of 2020, dated 05.11.2020, refers to the answer given in the Reference, dealing with the question whether Sub-Registrar can refuse to register a document on the ground that agreement of sale was already registered in respect of the same property. The said decision is not applicable to the case on hand, as the facts and circumstances therein are different.

5. In the present case, there is a court attachment of the property, and, as could be seen from records, the appellant has taken a loan and that the property has been mortgaged. Hence, we are of the view that the order of the learned single Judge is perfectly valid and, unless the Civil Court raises the attachment on an application that may be filed by the parties, the Sub-Registrar cannot register the document. If the contention of the appellant is allowed, then the purpose of mortgage itself is defeated. In other words, unless the loan, if any, is cleared and attachment is lifted, the Sub-Registrar cannot register the document. However, this observation cannot preclude the petitioner from approaching the Civil court to raise the attachment, as stated supra, and, thereafter, the authority for registration.



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6. Writ Appeal is disposed of accordingly. No costs.

Index : Yes/No
Internet : Yes/No
dixit

(S.V.N.,J.) (K.R.S.,J.)
18-01-2024

To

1.The Inspector General of Registration,
No.100, Santhome High Road,
Mylapore, Chennai -4.

2.The Sub-Registrar,
Sub-Registrar Office,
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