BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.12.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.14841 of 2019

Mrs.M.Vijayalakshmi ... Petitioner

/Vs./

1.The Branch Manager,
Indian Overseas Bank,
Crawford Branch,
Trichy-620 012.

2.The Regional Manager,
Indian Overseas Bank,
Regional Office,
Bharathidhasan Salai,
Trichy-620 001. ... Respondents

PRAYER**:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the first respondent to hand over all the original title deeds of the petitioner's property situated at Old Door No.18, New Door No.244, Anthoniar Koil Street, SF.No.141, T.S.No.371 Joint No.3, Sub RO. Chinthamani Village, Trichy Taluk, Trichy District, measuring an extent of 364 sq.ft to the petitioner.

For Petitioner : Mr.V.Veerapandian
M/s.Vastlaw Association
For Respondents : Mr.N.Dilip Kumar

ORDER

This writ petition has been filed for a direction directing the first respondent to hand over the original title deeds, in respect of the petitioner's property situated at Old Door No.18, New Door No.244, Anthoniar Koil Street, SF.No.141, T.S.No.371 Joint No.3, Sub RO. Chinthamani Village, Trichy Taluk, Trichy District, measuring an extent of 364 sq.ft, to the petitioner.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The petitioner and her husband approached the first respondent and availed a loan to the tune of Rs.2,75,000/- in order to purchase the property in Old Door No.18, New Door No.244, Anthoniar Koil Street, SF.No.141, T.S.No.371 Joint No.3, Sub RO, Chinthamani Village, Trichy Taluk, Trichy District. They mortgaged the said property with the first

respondent by deposit of title deed. Subsequently, the entire loan amount was repaid by the petitioner and the loan account itself was closed on 05.07.2018. Therefore, the petitioner sought for return of the original title deed, however, it was not considered on the ground that the petitioner's husband along with their daughter borrowed a educational loan and the said loan amount is not yet repaid. That apart, the petitioner's daughter is no more and as such, the petitioner is being the legal heir, she is also liable to pay the loan amount by stepping into the shoes of the daughter. The petitioner had executed a Memorandum on 28.02.2003 at the time of borrowal of loan thereby, deposited the title deed with an intent to secure the repayment to the Bank of moneys that are now due or shall form time to time or at any time be due from the petitioner and her husband either solely or jointly with any other person or persons to the Bank whether on balance of account or by discount or otherwise in respect of Bills of Exchange, Promissory Notes, Cheques and other negotiable instruments or in any manner whatsoever and including interest, commission and other banking charges and any LAW cost incurred in connection thereto.

4. On a perusal of the records revealed that with regard to the loan availed by the petitioner's husband and their daughter, the property stands in the name of the petitioner's husband has been deposited by way of deposit of title deeds. After availed the loan, the petitioner's daughter died. The petitioner's husband also committed default in repayment of the educational loan. Therefore, the respondents issued the demand notice and after issuance of possession notice, the property has been brought for auction sale.

5. On a perusal of the demand notice revealed that the total outstanding due is Rs.65,90,599.26/- as on 31.10.2024. The property was brought for auction and the upset price was fixed at Rs.76,48,000/-. Therefore, it is more than the balance due of the loan. Further, the Memorandum of Deposit of Title Deeds executed by the petitioner, dated 28.02.2003, at the time of borrowal of housing loan, whereas, the educational loan borrowed by the husband and their daughter on 13.10.2011 subsequent to the memorandum of deposit of title deeds.

6. Though the petitioner is also liable to repay the said loan, the memorandum of title deed, which was executed by the petitioner at the time of borrowal of loan on 28.02.2003 cannot be used for the subsequent educational loan borrowed by the petitioner's husband and their daughter. However, due to the demise of the petitioner's daughter, the petitioner is also liable to repay the said loan amount. As stated supra, already the property stands in the name of the petitioner's husband has been brought for auction sale and its upset price was fixed as Rs.76,48,000/-.

7. Therefore, the only question is that whether the respondents can exercise right of general lien in respect of the property which was deposited by the petitioner as security by way of deposit of title deeds in respect of the loan borrowed by the petitioner's husband and their daughter. In this regard, the Hon'ble Division Bench of this Court in the case of ***M.Shanthi vs. Bank of Baroda, rep. by its Chief Manager*** reported in ***2017-2-Writ L.R.584*** held 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 given an endorceable 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 the Indian Contract Act.

31. Hence, this Court is of the firm view that the respondent bank cannot exercise right on lien to secure any other liabilities of the mortgagor by retaining the documents of the mortgagor 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."

8. Further, the Hon'ble Divisional Bench held that the Bank cannot retain the title deeds 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.

9. In view of the above, the first respondent is directed to hand over the original title deed of the petitioner within a period of two weeks from the date of receipt of a copy of this order.

10. with the above direction, this writ petition is allowed. No costs.

05.12.2024

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

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Trichy-620 012.

2.The Regional Manager,
Indian Overseas Bank,
Regional Office,
Bharathidhasan Salai,
Trichy-620 001.

G.K.ILANTHIRAIYAN, J.

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Order made in
W.P.(MD)No.14841 of 2019

Dated:
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