



W.P.(MD)No.15841 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.15841 of 2024

A.K.Prabakar

... Petitioner

Vs

1. The District Registrar,
O/o.The District Registrar Office,
Nagercoil, Kanyakumari District.

2. The Sub-Registrar,
O/o.The Sub-Registrar Office,
Near Eraniel Police Station,
Thingal Nagar, Nagercoil, Kanyakumari District.

3. Vishanjee Manilal Patel,
Through one of its Partner,
A Registered Partnership Firm,
Door. No. 2/135b, Nilash Timbers,
Kottakulam, Senkottai, Tenkasi District.
(R3 is impleaded as per order of this
Court in WMP(MD) No., dated 26.07.2024)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the 2nd respondent to remove the entry made in the encumbrance of House Property (Door No.4/175A),



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in Old Survey No.1117C, 1117D, Resurvey No.770/11 (Now Divided as S.No. 770/11C, 770/12 situated at Eraniel Village (now Nullivilai B), Nullivilai Panchayat, Kalkulam Taluk, Kanyakumari, purchased through auction purchase by the petitioner.

For Petitioner : Mr.R.Vignesh
For Respondents : Mr.P.Subburaj (R1-R2)
Special Govt. Pleader

ORDER

This Writ Petition has been filed seeking direction to the 2nd respondent to remove the entry made in the encumbrance of House Property (Door No.4/175A), in Old Survey No.1117C, 1117D, Resurvey No.770/11, purchased by the petitioner, through auction purchase.

2. It is the case of the petitioner that original owner of the property in S.No. 1117C, 1117D, Resurvey No.770/11 has availed a loan from the bank and mortgaged the property on 20.03.2013. Thereafter, on 20.03.2015 he has also extended mortgage for other two properties, which were not originally mortgaged. As he defaulted, the proceedings under SARFASSI Act has been initiated, which culminated into issuance of the Sale Certificate in favor of the petitioner on 22.04.2021. During the pendency of the above proceedings, the unsecured creditor has filed a suit for recovery of money on the basis of some negotiable



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instrument in O.S.No.16 of 2018, on the file of Additional District Court, Tenkasi, much after the mortgage. In the above pendency of suit an application has been filed in I.A.No.12 of 2018, wherein, order of attachment before judgment has been passed. The same has been reflected in the Encumbrance Certificate of the property. Therefore, now it is the contention of the petitioner that since the mortgage is earlier to the judgment, it would not have any bearing and hence, such entry should be removed.

3.Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents. Perused the records available on record.

4.So far as the removal of entry from the encumbrance certificate is concerned, this Court is of the view that the entry itself is only to inform about the public about the nature of transaction effected in respect of the property in particular survey number. Therefore, either Sub Registrar or District Registrar cannot remove such entry as a matter of right, as far as the petitioner's case is concerned. As the petitioner is the auction purchaser based on the mortgage executed in the year 2013, any subsequent document executed in respect of same



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property will always subject to the sale certificate only. Since the secured creditor has already been realized and sale certificate is also issued, any further entry will become insignificant. In such view of the matter, mere entry will not bar for the petitioner to deal with the property.

5. With the above directions, this writ petition stands disposed of.

There shall be no order as to costs.

05.08.2024

NCC : Yes/No
Index : Yes/No
PNM

To

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O/o. The District Registrar Office,
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2. The Sub-Registrar,
O/o. The Sub-Registrar Office,
Near Eraniel Police Station,
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ORDER IN

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