



W.P.(MD)No.21293 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.09.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.21293 of 2024

and

W.M.P.(MD)Nos.18017 & 18022 of 2024

K.Mahalakshmi

... Petitioner

/Vs./

1.The Deputy Inspector General of Registrar,
Madurai District, Madurai.

2.The District Registrar,
Madurai North,
Madurai District.

3.The Sub Registrar,
Sub Registrar Office,
Karuppayaoorani,
Madurai District.

4.The Branch Manager,
Indian Bank,
No. 2/189, Sivagangai Road,
Karuppayaoorani,
Madurai District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order bearing No Nil dated Nil on the file of the 4th respondent and quash the same as illegal and consequently directing the respondents 1 to 3 forbearing from cancelling the settlement deed bearing No.4096 / 2024 dated 19.06.2024 on the file of the Sub Registrar of Karuppayaoorani, Madurai.

For Petitioner : Mr.M.Divakaran

For Respondents : Mr.P.Subburaj (R1 to R3)

Special Government Pleader

Mr.C.Karthik (R4)

Standing Counsel

ORDER

This writ petition has been filed challenging the impugned letter sent by the fourth respondent bank to the third respondent seeking for cancellation of the document No.4096 of 2024 dated 19.06.2024.

2. Heard Mr.M.Divakaran, learned counsel appearing for the petitioner and Mr.P.Subburaj, learned Special Government Pleader



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appearing for the respondents 1 to 3 and Mr.C.Karthik, learned Standing Counsel appearing for the fourth respondent.

3. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

4. The learned counsel appearing for the fourth respondent bank would submit that despite the existence of three mortgages over the very same property in favour of the fourth respondent bank, the guarantor to the loan transaction has executed a settlement deed dated 19.06.2024 registered as Document No.4096 of 2024 in favour of his second son, which is illegal. Therefore, he would submit that only under those circumstances, the impugned letter was issued by the fourth respondent requesting the third respondent to cancel the aforementioned document, as it is a fraudulent document.

5. The learned Special Government Pleader appearing for the official respondents would submit that in view of the fact that Section 77A of the Registration Act, 1908, having been held unconstitutional by



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the Division Bench of this Court, the respondents cannot cancel any registered document and only the civil Court has got the power. Therefore, he would submit that the respondents cannot act upon the impugned letter sent by the fourth respondent and cancel the document dated 19.06.2024 bearing Reg.No.4096 of 2021. The said undertaking given by the official respondents through the learned Special Government Pleader is recorded. Further, in any case, if mortgage is prior in any point of time, any transfer subsequent to the mortgage is always subject to the mortgage existing with the fourth respondent bank.

6. For the foregoing reasons, this writ petition is disposed of by recording the statement made by the official respondents that in view of the fact that Section 77 A of the Registration Act, 1908, being held to be unconstitutional by the Division Bench of this Court, the respondents are not going to act upon the impugned letter issued by the fourth respondent, as only the civil court is having the power for cancellation of any registered document and by observing that the registered document dated 19.06.2024 bearing Reg.No.4096 of 2024 executed by the petitioner in favour of his second son is also subject to the mortgages



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created by the petitioner in favour of the fourth respondent bank and execution of any document subsequent to the mortgage will not affect the rights of the fourth respondent bank. No costs. Consequently, connected miscellaneous petitions are closed.

06.09.2024

Index : Yes / No

NCC : Yes / No

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TO:-

- 1.The Deputy Inspector General of Registrar,
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- 3.The Sub Registrar,
Sub Registrar Office,
Karuppayaoorani,
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ABDUL QUDDHOSE, J.

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Order made in
W.P.(MD)No.21293 of 2024

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