



W.P.(MD) No.29149 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2024

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CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD) No.29149 2023

and

W.M.P.(MD)Nos.25236 and 25237 of 2023

Rajendran

...Petitioner

-vs-

1.The Inspector General of Registration,
O/o. the Inspector General of Registration
No.100, Santhom Highway,
Chennai-600 028.

2.The District Registrar (Admin),
O/o.District Registrar,
Ramanathapuram,
Ramanathapuram District.

3.The Sub-Registrar,
Joint-II Sub-Registrar Office,
Ramanathapuram District.

4.Rajkumar

5.Kannan

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari, to call for the records pertaining to the impugned order in Na.Ka.No.5975/Aa1/2022 dated

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19.09.2023 on the file of the second respondent and to quash the same as unconstitutional.

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For Petitioners	: Mr.D.Balamuruga Pandi
For R1 to R3	: Mr.C.Satheesh
	Government Advocate
For R5	: Mr.S.Senthil

ORDER

The petitioner has filed this writ petition challenging the order of the second respondent in Na.Ka.No.5975/Aa1/2022 dated 19.09.2023 cancelling the documents registered in favour of the petitioner in the year 2022 in Document Nos.3228 of 2022, 3829/2022, 3234/2022, 3235 of 2022, 3337 of 2022, 3338 of 2022, 3407 of 2022 and 3408 of 2022.

2. It is the case of the writ petitioner that the subject property originally belongs to the fourth respondent/Rajkumar, who mortgaged the title deeds to the Karur Vysya Bank Limited, Ramanathapuram, for improving his business. Subsequently, the fourth respondent furnished the documents relating to the property for creating equitable mortgage in favour of the bank. Accordingly, the title deeds and other documents were deposited and created mortgage in favour of the bank. Thereafter,



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the bank sanctioned loan amount to the fourth respondent. Since the fourth respondent was unable to repay the said loan amount, the petitioner intended to pay the said amount and subsequently, the same has been deposited to the bank and redeemed the properties. Thereafter, the said properties were purchased by the petitioner from the fourth respondent and enjoying the same.

3. Under these circumstances, a complaint has been given by the fifth respondent/Kannan to cancel the aforesaid sale deeds on the ground that the sale has been made by the fourth respondent in favour of the petitioner suppressing the interim order passed in I.A.No.3 of 2021 in O.S.No.314 of 2021 under Order 38 Rule 5 on 29.04.2022, which was also communicated to the District Registrar. Based on the complaint, enquiry was conducted and impugned order came to be passed. Challenging the same, the writ petition has been filed.

4. According to the petitioner, the very attachment order has been communicated to the Registering authority only on 29.11.2022, but the sale deed was executed much prior to the date of communication.



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Further, the sale is void only against the claims enforceable under the attachment, not in entirety. Therefore, cancelling the entire sale deeds cannot be sustained in the eye of law.

5. The learned counsel for the fifth respondent would submit that the suit has been filed for recovery of money for a sum of Rs.40,00,000/- and interim order of attachment has been passed in I.A.No.3 of 2021. The fifth respondent had given a complaint before the District Registrar on 21.11.2022 and communicated the order of attachment. The fourth respondent being the party to the suit knowing very well about the order of attachment, had sold the property. Hence, the impugned order passed by the second respondent does not require any interference.

6. Heard both sides and perused the materials available on record.

7. At the outset, this Court is of the view that though Section 22B introduced by way of amendment prohibits registration of document, when the subject property has been attached, now, the power to cancel



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such document is not available with the Registering Authority. Though Section 77A has been brought by way of amendment to cancel the document registered in contravention of Section 22B, now, Section 77A is also struck down by the Hon-ble Division Bench of this Court in ***W.P.No.10291 of 2022 batch*** as unconditional.

8. Be that as it may, even as per Section 64 of the Code of Civil Procedure, it can be seen that the private alienation is void only as against the claims enforceable under the attachment. In such view of the matter, the entire sale deeds cannot be cancelled by the authority citing the attachment. Accordingly, this Writ Petition is allowed and the impugned order passed by the second respondent dated 19.09.2023 in Na.Ka.No.5975/Aa1/2022 is hereby quashed. It is made clear that the sale is always subject to the outcome of the civil suit. There shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

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Index : Yes / No
Internet : Yes / No
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N.SATHISH KUMAR, J.

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