IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.11.2025

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No. 28671 of 2025

Omkara Assets Reconstruction Private Limited,
(acting in its capacity as Trustee of the Omkara PS13/2024-25 Trust),
Represented by Deputy Vice President,
Mr.Rajesh B Jumani ... Petitioner

Having its Registered Office at :
No.9, MP Nagar First Street,
Kongu Nagar Extension,
Tirupur – 641 607, Tamil Nadu.

Having Branch Office at:
New No.397, Old No.251, Precision Plaza,
3rd Floor, Anna Salai, Teynampet,
Chennai -600019.

Vs.

1.The Inspector General of Registration,
Registration Department,
100, Santhome High Road,
Chennai – 600 020.

2.The Joint-III Sub-Registrar Office Salem (West),
Near Mariamman Temple, Sivathapuram,
Chengikottai, Salem – 636307. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of writ of mandamus, directing the 1st respondent pursuant to his rule-making powers under Section 69 of the Registration Act, 1908, to issue appropriate guidelines to all Sub-Registrars across the State of Tamil Nadu to not refused registration of a Deed of Assignment executed under Section 5 of the SARFAESI Act, 2002 and presented for registration by an Asset Reconstruction Company registered with Rbi, on the ground of existing encumbrances.

For Petitioner : Mr.P.V.Balasubramaniam Sr Counsel

For Respondents : Mr.J.Ravindran
Additional Advocate General assisted by

Mr.U.Baranidharan
Special Government Pleader

ORDER

This Writ Petition has been filed for a mandamus, directing the 1st respondent pursuant to his rule-making powers under Section 69 of the Registration Act, 1908, to issue appropriate guidelines to all Sub-Registrars across the State of Tamil Nadu to not refuse registration of a Deed of Assignment executed under Section 5 of the SARFAESI Act, 2002 and presented for registration by an Asset Reconstruction Company registered with RBI, on the ground of existing encumbrances.

2. The learned counsel for the petitioner would submit that in the course of assignment, the concerned Sub-Registrar is taking a stand that wherever there is a view of Commercial Tax Department, even though it is subsequent to the mortgage, the Sub-Registrar will certainly taking into consideration of the attachment order passed by the Commercial Tax Department, refused to register the same. Against the said aspect, the petitioners has approached this Court in very many cases, wherein this Court, after taking into consideration, has categorically held that in the event, if the mortgage has occurred initially and Commercial Tax Department views was made subsequently, then the Bank has to be considered as first charge holder and the Commercial Tax Department will be the second charge holder.

3. When the first charge holder hold the properties and the 2nd charge holders right will accrue against the remaining of the sale proceeds after settlement of the 1st charge holder. In such case, the Commercial Tax Department, being the 2nd charge holder, will take charge over the subject property only after settling the dues of the 1st charge holder by virtue of sale proceeds of the said subject property. The

aforesaid stand was taken by the petitioner and the same was also accepted by this Court in very many cases, where the respondents refused to register the assignment deeds executed by the original lenders, Banks, Financial Institutions in favour of the petitioners and other financial institutions. Therefore, the present writ petition is filed.

4. The Additional Advocate General made a strong objection to the submissions made by the petitioner and would submit that the facts and circumstances of each and every case will be different, in which case, no general order will be passed with regard to registration of document by citing the order passed in other cases. Depends upon the facts and circumstances of the present case, the decision has to be made by the respondents. However, by virtue of this petition, the petitioner is seeking for a general direction from this Court to register the document submitted by the petitioner by assuming the Bank as 1st charge holder. This prayer cannot be granted, unless and otherwise, facts and circumstances of this case is studied by applying the principle laid down by this Court.

5. Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondents and also perused the entire materials available on record.

6. The issue pertaining to the right of 1^{st} charge holder and 2^{nd} charge holder has already been well settled in very many cases by this Court as well as the Hon'ble Apex Court.

7. As far as the 1^{st} charge holder is concerned, he can bring the property for sale. Once if the property was sold, after settling the dues of 1^{st} charge holder, if any sale proceed remains, the same will be paid to the 2^{nd} charge holder. There is no dispute on this aspect.

8. However, in this case, both the Bank and the Commercial Tax Department are claiming themselves as 1^{st} charge holders. Now, the subject matter that has to be decided is as to who is the 1^{st} charge holder and it will differ on case to case basis.

9. In some cases, the Commercial Tax Department will be prior to other secured creditors and it will be the 1st charge holder, whereas, in some cases, the Bank will be the 1st charge holder. When such being the case, the subject matter has to be examined only on case to case basis and thus, no general direction can be issued to the respondents for registration of documents by assuming the bank as 1st charge holder, always.

10. However, it is made clear that if there is no dispute in treating the Bank as 1st charge holder and Commercial Tax Department as 2nd charge holder, then, the Sub-Registrar will not have any impediment in registering the documents submitted by the petitioner. On the other hand, if there is any dispute, certainly, the respondents have to hear all the parties concerned and thereafter, he can decide with regard to the registration of documents. When such being the case, no general order can be passed without verifying the above aspects.

11. Therefore, the respondents shall first ascertain as to whether the bank is 1st charge holder or not and thereafter, decide on the aspect of registration of the documents, submitted by the petitioner.

12. With the above directions, this writ petition is disposed of. No cost.

05.11.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

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To

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Registration Department,
100, Santhome High Road,
Chennai – 600 020.

2.The Joint-III Sub-Registrar Office Salem (West),
Near Mariamman Temple, Sivathapuram,
Chengikottai, Salem – 636307.

KRISHNAN RAMASAMY, J.

KKN

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