(2023) 09 KL CK 0079

In the High Court Of Kerala

Case No : Writ Petition (C) No. 32436 Of 2022

Jose Antony Thottassery — APPELLANT

Vs

Sub Registrar, Thiruvalla — RESPONDENT

Date of Decision : 11-09-2023

Acts Referred:

Registration Act, 1908 — Section 17(2)(xii), 89A, 89(4)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13

Citation : (2023) 09 KL CK 0079

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : Jacob P.Alex, Joseph P.Alex, Manu Sankar P., Amal Amir Ali, Bimal K.Nath, M.Jithesh Menon, P.Anoop

Final Decision : Allowed

Judgement

T.R. Ravi, J.

1. The petitioner purchased property having an extent of 18.40 Ares (45.448 cents) in Re-Sy.Nos.133/4 and 133/4-1 of Kavumbhagom Village, Thiruvalla, and the buildings thereon as per the sale certificate dated 11.09.2009 issued under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and Security interest (Enforcement) Rules, 2002. The properties originally belonged to respondents 5 and 6, who had mortgaged the same with the 2nd respondent. Ext.P1 dated 11.9.2009 is the sale certificate issued pursuant to the auction. After the mortgage, the 5th respondent had executed two sale deeds in favour of the 4th respondent, which took in 16.350 cents of property out of the extent of 45.448 cents situated to the southern side. The sale deeds are dated 29.7.2005 and 30.6.2007, respectively. The 4th respondent thereafter filed a suit before the Munsiff Court, Thiruvalla, praying for an injunction restraining the 5th respondent from trespassing on the property. The suit was transferred to the Sub Court,

Thiruvalla, and renumbered as O.S.No.77 of 2009. The 5th respondent filed O.S.No.155 of 2008 before Sub Court, Thiruvalla, seeking to cancel the sale deeds, declaring them as void and for other reliefs. The Sub Court considered both the suits jointly and, by order dated 20.12.2008, directed the parties to maintain the status quo.

2. While so, as there was default in repaying the instalments, the 2nd respondent on 25.01.2007 classified the loan as a Non-Performing Asset under the SARFAESI Act and initiated steps under Section 13 of the Act for enforcement of security interest. The respondents 5 and 6 approached the petitioner for private sale under the SARFAESI Act and Rules with the consent of the bank. Pursuant to the directions of this Court in W.P.(C) 20274 of 2009, directing the bank to consider the possibility of private sale, the bank sold the entire property to the petitioner. The 4th respondent filed SA No.187 of 2010 before the Debt Recovery Tribunal (DRT), Ernakulam, seeking to set aside Ext.P1 sale certificate. The Tribunal passed Ext.P2 interim order on 08.03.2010 in IA No.729 of 2010 in SA No.187/2010, directing parties to maintain the status quo. SA No.187 of 2010 was re-numbered as TSA No.118 of 2016 by DRT-II, Ernakulam. Since the same issue was pending before the Sub Court, Thiruvalla, and the DRT, the petitioner approached this Court filing OP(C)No.2136 of 2011 to transfer the suit from the Sub Court to the DRT, Ernakulam or to stay proceedings in the civil suit pending disposal of the application by the DRT. This Court directed that the proceedings in the civil suit in Sub Court, Thiruvalla should be kept in abeyance and further directed the DRT to dispose of the application as early as possible.

3. When there was a delay in the disposal of the case, the petitioner filed O.P(DRT) No. 22 of 2020 before this Court, seeking a time-bound disposal of the application pending before DRT. Pending the litigation, respondents 1 and 3 did not take steps to comply with the procedure for filing a copy of the sale certificate in Book No.1 in terms of Section 89(4) of the Registration Act due to Ext.P2 order. This prevented the petitioner from enjoying the property since the purchase in 2009. On 06.08.2022, the DRT II, Ernakulam, as per Ext.P5, dismissed TSA No.118/2016, finding that the claim by the 4th respondent is not maintainable. The 4th respondent approached this Court in W.P(C) No.26794/2022, and this Court inter alia directed the bank to register the sale certificate in favor of the petitioner, subject to any orders that

may be passed by the Debts Recovery Appellate Tribunal. The petitioner purchased stamp paper worth Rs.72,000/- for engrossing the sale certificate for registration. The entire transaction was performed in the year 2009, and Ext.P1 was issued on 11.09.2009. The certificate was revalidated by the 3rd respondent by issuing a sale certificate afresh on 22.09.2022, engrossing on the stamp paper, specifically mentioning that the entire amount of Rs.9,00,000/- was paid on 8.9.2009. The fee prescribed for registration was also deposited by the petitioner. Ext.P7 is the copy of the sale certificate engrossed on the stamp paper. A portion of property covered by Ext.P1 sale certificate, which is not a subject matter in the litigation, is already mutated in the name of the petitioner, and tax is being paid as is evidenced by Ext.P8. The 1st respondent, however, issued Ext.P9 notice dated 30.09.2022, demanding additional stamp duty based on the fair value and value of the building for the purpose of registering the document. The writ petition has been filed challenging the demand for additional stamp duty.

4. Heard Sri.Jacob P. Alex on behalf of the petitioner and Sri.Bimal.K.Nath, Senior Government Pleader on behalf of the respondents.

5. The counsel for the petitioner contended that the sale should have been treated to have been complete on the issuance of the sale certificate, and the stamp duty payable can only be the stamp duty that was payable at that point of time. It is further contended that Ext.P1 is the sale certificate, and Ext.P7, which is issued subsequently, is only a revalidation of Ext.P1. The next contention that is taken is that as per Section 17(2)(xii) of the Registration Act, Ext.P7, the sale certificate granted under the SARFAESI Act does not require compulsory registration. It is contended that the 1st respondent was duty bound to take steps for filing a copy of Ext. P7 sale certificate in Book No.1 in terms of Section 89(4) of the Registration Act. Lastly, it is contended that the delay happened only since the matter was pending before the courts, and the petitioner cannot be prejudiced for the delay caused in the court. Reliance is placed on the legal maxim Actus curiae neminem gravabit.

6. The Senior Government Pleader argued on the basis of the counter affidavit filed in the case, with particular reference to Section 89A of the Registration Act. It is contended that Article 16 of the Stamp Act refers only to a sale conducted by the Revenue Authorities, and it does not include a DRT sale. Reliance is placed on the decision in Madhavan K.B. v. Sub Registrar, Ernakulam and Another [2010 (2) KHC 509] to submit that a sale certificate is not an instrument of transfer.

7. The counsel for the petitioner relied on the decision in Indian Overseas Bank v. RCM Infrastructure Ltd. and Another [2022 (8) SCC 516]. Particular reference is made to paragraphs 32 and 33, wherein the Supreme Court has held that a sale under the SARFAESI Act is a statutory sale governed by Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002, and the sale would be complete only when the auction purchaser makes the entire payment and the authorised officer, exercising the power of sale, issues a certificate of sale of the property in favour of the purchaser in the form given in Appendix V to the Rules. The court further held, referring to the judgment in Shakeena v. Bank of India [(2021) 12 SCC 761] and S.Karthik v. N.Subhash Chand Jain [(2022) 10 SCC 641], that the sale certificate issued did not require registration and that the sale process was completed on issuance of the sale certificate. The counsel also relied on the judgment of a Division Bench of this Court in State of Kerala v. George Jacob [2005 (4) KLT 709], wherein this Court had considered the issue with reference to the Stamp Act, 1959 (Kerala). This Court held that the stamp duty payable is the one that was prevailing at the time of signing the document and that the

words “executed” and “registered” refer to two different concepts. The Court held that what is relevant is the date of execution and not the date of registration.

8. I have considered the contentions advanced on either side. In view of the judgment of the Division Bench of this Court in George Jacob (supra), which was a judgment in an appeal preferred by the State, the State can no longer contend that stamp duty payable should be based on the prescription at the time of registration. The only question that would remain then is when exactly the sale takes place in the case of a sale held under the SARFAESI Act. Going by the judgments of the Hon’ble Supreme Court in Shakeena (Supra), S.Karthik (Supra) and Indian Overseas Bank, (Supra) there can be no further doubt regarding the said issue since the Court has specifically held that the sale is complete on the issuance of the sale certificate. In the case on hand, the sale certificate was admittedly issued in 2009 and revalidated on 22.09.2022. Ext.P1 is the original certificate dated 11.09.2009. It necessarily follows that the sale was completed in 2009, and the stamp duty payable is as on the date of Ext.P1.

9. The writ petition is hence allowed. Ext.P9 is quashed. It is declared that the stamp duty payable on Ext.P7 has to be assessed on the basis of the purchase money paid and in accordance with the rate of duty payable at the time of the transaction and issuance of the original sale certificate Ext.P1. There will be a direction to the 1st respondent to accept Ext.P7 sale certificate and register the same in accordance with law without insisting on any additional amounts as stamp duty within six weeks from the date of receipt of a copy of this judgment.