
(2015) 02 MAD CK 0284

In the Madras High Court

Case No : Writ Petition No. 31061 of 2012

S.E. Iqbal and Others

APPELLANT

Vs

The Sub Registrar and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 10
Registration Act, 1908 — Section 71

Citation : (2015) 02 MAD CK 0284

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : D. Sreenivasan, for the Appellant; V. Jayaprakash Narayanan, Special Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—Heard Mr.D.Sreenivasan, learned counsel appearing for the petitioners, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing on behalf of the first respondent and Mr.S.Namasivayam, learned counsel appearing for the second respondent.

2. The petitioners seek for the issuance of a writ of certiorarified mandamus to quash the impugned proceedings dated 28.01.2012 passed by the first respondent refusing to entertain the registration of the Sale Certificate executed in favour of the petitioners by the second respondent pursuant to the auction initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act] on the ground that there is an attachment by the Civil Court prior to the Sale Certificate being executed in favour of the petitioners.

3. The issue raised in this writ petition is squarely covered by the earlier decision passed by this Court wherein an identical issue was considered. At this stage, it will be useful to refer the operative portion of the said order passed by this Court dated 01.09.2014 in W.P.(MD) No. 14388 of 2014:

"4. Section 71 of the Registration Act, 1908 deals with reasons for refusal to register which has to be recorded. In terms of Sub Section (1) of Section 71, every Sub Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his Sub District, shall make an order of refusal and record his reasons for such order in his Book No. 2 and endorse the words ""registration refused"" on the document, and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded. In terms of Sub Section (2), no registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

5. In such circumstances, merely because there is an order of attachment passed by a Civil Court, the same cannot be a ground to refuse to register the Memorandum of Deposit of Title Deeds. If any deposit of title deeds is created in respect of the said property pursuant to the right acquired by the petitioner, vide Settlement deed, dated 04.07.2011, it is always subject to further orders to be passed by the Civil Court. The petitioner's case is that she acquired title by way of settlement deed dated 04.07.2011, much prior to the order of attachment. Further, the learned counsel appearing for the petitioner placed reliance on Order 38, Rule 10 CPC stating that attachment before Judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree. The lending bank namely, Canara Bank, Vadamadurai if satisfies with the title of the petitioner over the property, can request the Registrar to register the document. In such circumstances, merely because an order has been passed by the Civil Court effecting attachment, cannot be a bar for entertaining a document for registration. Hence, the reasons assigned by the respondent refusing to register, vide his memo, dated 25.07.2014, is not in accordance with law beyond the scope of Section 71 of the Act.

6. For the above reasons, the writ petition is allowed and the respondent is directed to accept the Memorandum of Deposit of Title Deeds dated 24.07.2014 and register the same within a period of four weeks from the date of receipt of a copy of this order. It is made clear that mere registration of the Memorandum of Deposit of Title Deeds will not in any manner affect any order of attachment, which was already effected and placed in the Encumbrance Certificate. No costs."

4. The above decision of this Court is applicable to the facts and circumstances of this case and the second respondent- Bank, being a secured Creditor is entitled to exercise their power and in exercise of such power, they have brought the property for sale by invoking the provisions of the SARFAESI Act and executed the Sale Certificate in favour of the writ petitioners.

5. In such circumstances, the question of refusing to register the same does not arise though there was an order of attachment obtained in respect of the

property in question.

6. In the light of the above, this writ petition is allowed and the impugned order is set aside and the first respondent is directed to register and release the Sale Certificate produced by the petitioners within a period of four weeks from the date of receipt of a copy of this order and it is made clear that the registration and release of the Sale Certificate will not in any manner affect any order of attachment. No costs.