(2023) 12 KL CK 0056

In the High Court Of Kerala

Case No : Writ Petition (C) No.30751 Of 2023

State Bank Of India APPELLANT

Vs

The Sub Registrar RESPONDENT

Date of Decision : 06-12-2023

Acts Referred:

Registration Act, 1908 — Section 51

Citation : (2023) 12 KL CK 0056

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : M.Jithesh Menon, P.G.Maheshkumar, R.Brijesh, K.Indu, Kurian T. Vadakkel, S. Gopakumar, Anil Kumar P V, T.M. Binitha, Deepa V.

Final Decision : Disposed Of

Judgement

Murali Purushothaman, J

1. The petitioner, a nationalised Bank, has filed this writ petition for a direction to the 1st respondent Sub Registrar and the 2nd respondent Village Officer to delete the entry of attachment in the encumbrance register in respect of its secured asset.

2. One Razia Fazal availed a housing loan from the petitioner Bank by creating equitable mortgage on 23.02.2011 by deposit of title deed in respect of the property having an extent of 1.39 Ares, with a building numbered as CC XLVIII/1823, comprised in Sy. No.200/4 of Edappally South Village. The borrower defaulted payment of installments and the Bank initiated proceedings under the SARFAESI Act and the mortgaged property was sold in auction. Ext.P5 is the sale certificate dated 29.07.2023.

3. When the petitioner applied for encumbrance certificate with respect to the mortgaged property, it was found that there are certain attachments over the property pursuant to orders of courts. The petitioner submits that from Ext.P6 encumbrance certificate, it can be seen that all the attachments referred to

therein obtained by respondents 3 to 8 are subsequent to the creation of the equitable mortgage by the borrower in favour of the petitioner. The petitioner, therefore, contends that the attachments at the instance of respondents 3 to 8 cannot affect the right of the petitioner to sell the property under the provisions of the SARFAESI Act and that the borrower has lost the right to redeem the property as per the provisions of the SARFAESI Act.

4. Heard the learned counsel for the petitioner and the learned Government Pleader.

5. The learned counsel for the petitioner relied on the decision of this Court in Madhan S. v. Sub Registrar, Kollam and Others [2014 (1) KHC 249: 2014 (1) KLT 406: ILR 2014 (1) Ker.586: 2014 (1) KLJ 483: AIR 2014 Ker.54] and the decision of a Division Bench of this Court in Secretary, Keechery Service Co-operative Bank Ltd. v.Sajitha Nizar alias Sajitha P.M. and Others [2020 (5) KHC 231: ILR 2020 (4) Ker.249: 2020(6) KLT 68: 2020(4) KLJ 970] and contends that the attachment effected subsequent to the creation of equitable mortgage will not affect the right of the petitioner to sell the mortgaged property and the attachments have to be effaced from the encumbrance register.

6. In Madhan's case (supra), this Court held in paragraph 9 as follows:-

“9. The preponderance of judicial opinion leads to the irresistible conclusion that the sale of the mortgaged property in favour of the petitioner under Ext. P5 sale certificate under the Act is free of all encumbrances. The attachments effected subsequent to the mortgage created in favour of the bank do not affect the title and ownership of the petitioner over the subject property. Such attachments have no impact on the sale conducted under the Act and the same ceases to have any effect or fall to the ground the moment the sale is petitioner. The confirmed in favour of the declaration so sought by the petitioner is therefore granted and I further direct the Sub-Registrar and the Village Officer to efface the attachments effected subsequent to the mortgage from the relevant records. Otherwise those attachments would remain as a permanent taboo prejudicial affecting the marketability and title to the property even though they ceased to have any legal efficacy. The needful in relation to the property bought by the petitioner shall be done within a period of two months from the date of receipt of a copy of this judgment.”

7. A Division Bench of this Court in Ali Asharaf M.M. and Another v. Sub Registrar, Thrissur (Judgment dated 24.7.2015 in W.A. No.612/2015) has affirmed the law laid down in Madhan's case (supra). In Keechery Service Co-operative Bank case (supra), another Division Bench of this Court also affirmed the law laid down in Madhan's case (supra) and held in paragraph 7 as under:-

“7. …. We do not find any reason to disagree with the declaration of law in Madhan's case (supra) which was virtually affirmed by the Division Bench in Ali Asharaf's case (supra). In the said circumstances and taking note of the fact that the orders of attachment of the property in question were after the creation of equitable mortgage of the same with Federal Bank we do not find any reason to interfere with the impugned judgment passed by the learned Single Judge following the dictum in Madhan's case (supra), carrying the directions to effect mutation of the property as also to efface all encumbrance over the property effected after 27/06/2014, the date on which the property in question was mortgaged with Federal Bank".

8. Thus it is trite law that attachment effected subsequent to the creation of equitable mortgage does not have any effect on the sale conducted by the Bank under the SARFAESI Act and has to be effaced from the encumbrance register. It can be seen from Ext.P6 Encumbrance Certificate that all the attachments referred to therein are obtained by respondents 3 to 8 after the creation of equitable mortgage in favour of the petitioner. Accordingly, there will be a direction to the 1st respondent to efface the entry regarding all attachments after 23.02.2011 in respect of the mortgaged property from Book No.1 maintained under Section 51 of the Registration Act, 1908 and a further direction to the 2nd respondent to mutate the property de hors the aforesaid attachments, if the application for mutation is otherwise in order.

The writ petition is disposed of.

