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Proceedings of the Chief Controlling Revenue Authority and Inspector General of Registration, Chennai–600 028

Present: Thiru.Dinesh Ponraj Oliver, I.A.S.,

D.Dis.No. 17019/P1/2019 Dated 22.03.2024

Sub : Revision Petition – Document No.P190/2018, Sub Registrar office, Mylapore – received under section 56(1) of the Indian Stamp Act, 1899 against the order passed by Sub Registrar, Mylapore (in the cadre of District Registrar) – order issued – regarding.

Ref : 1. Sub Registrar, Mylapore (in the cadre of District Registrar) order No.I.No.1–2019 dated 25.03.2019
2. Mrs.Padma Subramani for M/s.Imperial Consultants and Securities Limited, Petition dated 23.4.2019.

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ORDER:

Revision petition 2nd cited has been filed under section 56 (1) of the Indian Stamp Act, 1899 before the Chief Controlling Revenue Authority against the order 1st cited passed by the Sub Registrar, Mylapore (District Registrar Cadre) wherein it has been ordered to pay deficit stamp duty of Rs.30,79,60,000/– and penalty of Rs.1000/– in respect of document No.P.190/2018 on the file of Sub Registrar office, Mylapore.

2) Facts of the Review Petition are as follows:–

Document No.	No.P.190/2018
Office	Sub Registrar office, Mylapore
Date of Execution	18.12.2018
Title	Deed of Mortgage.
Executants	Imperial Consultant and Securities LImited
Claimant	Yes Bank Limited.
Loan Amount	Rs.770,00,00,000/–
Stamp Borne by the deed	Rs.40,000/–
Nature of document as determined by the District Registrar	Under Article 40(a) Indian Stamp Act 1899 Mortgage with Possession

(P.T.O)

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Deficit stamp duty & penalty determined by the District Registrar	Rs.30,79,60,000/- & Rs.1,000/-

The aforesaid document has been impounded by the Sub Registrar, Mylapore (in the cadre of District Registrar) based on the following clause found in Sl.No.10 clause (a)(ix) of the instant document.

"The Mortgagor shall always be in a position to hand over peaceful possession of the Mortgaged properties to the Mortgagee or any nominees, assigns or representatives of the Lender/Mortgagee and shall forthwith hand over peaceful possession of the Mortgaged properties upon being directed by the Mortgagee"

By relying on the above Clause the Sub Registrar held that the Mortgagor is bound to hand over the possession as and when he is directed to do so by the Mortgagee and the same is not dependent upon the event of default. Based on the above proposition the Sub Registrar (in the cadre of District Registrar) Vide proceedings dated 25.3.2019, classified the document as Mortgage with Possession and determined the deficit stamp duty as Rs.30,79,60,000/- and penalty as Rs.1, 000/- Aggrieved over above decision present revision petition has been filed.

3) The revision petitioner, through his counsel was heard on 22.11.2023

Major contentions of the revision petitioner:

(i) The Sub Registrar (In the Cadre of District Registrar) has misinterpreted the clause 10 (a) (ix) mentioned in the Instant document, and also failed to

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read clause 10 (a) (i) and concluded the nature of document as Mortgage with Possession.

(ii) The Clause (i) in the instant document read as *"Upon happening of an Event of default, it shall be lawful for the Mortgagee and/or its agents including the receiver to enter into and take possession of the Mortgaged Properties and any future assets comprised in these presents and thenceforth the Mortgagor shall take no action inconsistent with or prejudicial to the right of the mortgagee and/or its agents to possess, use and enjoy the same and to receive the income and benefits thereof without interruption or hindrance by the Mortgagor or by any person or person whomsoever"*

Therefore, it is clear that possession has not been handed over to the mortgagee, and the mortgagee is entitled to take possession only in the event of the default by the mortgagor.

4) Contents of revision petition, connected records received from District Registrar, the argument advanced by the counsel have been carefully examined by me.

It is a trite law that no part of any written document should be read in part, but must be read as a whole. (Madras High Court order dated 18.6.2019 in S.A.No.1004 of 2009).

Accordingly clause 10 (a) (ix) of the document which recite that "*the mortgagor shall forthwith hand over peaceful possession of the mortgaged property upon being directed by the Mortgagee*" has to be read in conjunction with the clause 13 (b) (vi) of the document which empowers the Mortgagee to take possession of the property after the security interest becomes enforceable i.e., upon happening of an event of default.

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Moreover clause 10 (a) (iv) stipulates that the mortgagor shall permit the mortgagee and its representative upon prior notice, to inspect the property. This clause makes it clear that possession is retained by the mortgagor. In IGR circular No.49698/P1/2013 dated 27.11.2013 it has been instructed that such clause would prove that possession of the property is not parted with by the mortgagor.

Furthermore, clause 15(b) of the document provides that it shall be lawful for the mortgagor to retain possession of the property until the mortgagee becomes entitled to take possession as provided under the document.

This clause 15(b) also reflects the intention of the parties that possession of the property will be taken over by the mortgagee only when the security interest becomes enforceable, in other words upon happening of event of default.

Hence in view of the legal position discussed above, the document in question is classifiable under Article 40(b) of the Indian Stamp Act, 1899, as a Simple Mortgage deed. Based on the above decision the order of the District Registrar is set aside and the revision petition is allowed.

Sd/– Dinesh Ponraj oliver /–22 .03.2024
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

District Registrar (Inspection

25/3/24

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To

1) M/s.Imperial Consultants and Securities Ltd.,
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1/3 General Patterns Road,
Chennai – 600 002.

2) Mrs.Padma Subramanian,
No.4, Indira Nagar,
Second Avenue Adyar,
Chennai – 600 020.

3) MS.M.Rajamanickam, R.Rajesh,
Vivekananthan, J.Anthony Jeesuraja (Advocate)
No.152, Thamby Chetty Street, 3rd Floor,
Chennai – 600 001.

4) Sub Registrar,
Mylapore (District Registrar Cadre)
(With original file)
Copy to: Stock File

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