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.10057/P1/2020 Dated 22.08.2024

Sub : Revision Petition–Document No. P.15/2015, Sub Registrar Office Ganapathy–received under section 56(1) of the Indian Stamp Act, 1899 against the order passed by District Registrar, Coimbatore - order issued – regarding.

Ref : 1. District Registrar, Coimbatore order No.7601/B1/2015 dated 7.2.2020.

2. Revision Petition dated 10.3.2020 received from Mr.V.S.J.Dinakaran

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ORDER:

The revision petition 2nd cited has been filed under section 56 (1) of the Indian Stamp Act, 1899 before the CCCRA cum IGR against the order 1st cited passed by the District Registrar, Coimbatore wherein it has been ordered to pay deficit stamp duty of Rs.30,21,453/- and penalty of Rs.1547/- in respect of document No.P.15/2015 on the file of Sub Registrar office, Ganapathy.

2) The facts relating to the revision petition and the document in question are as follows:-

Document No.	No.P.15/2015
Office	Sub Registrar office, Ganapathy
Date of Execution	27.3.2015
Title	DEED OF SIMPLE MORTGAGE (Without Possession)
Executant	Mr.V.S.J.Dinakaran S/o.V.S.Jayaraman
Claimant	M/s.Religare Finvest Ltd.

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Loan Amount	Rs.7,55,36,323/-
Stamp Borne by the deed	Rs.40,000/-
Nature of document as determined by the District Registrar	Mortgage {Article 40(b)} and Power of Attorney to sell immovable property granted for consideration {Article 48(e)}
Deficit stamp duty & penalty determined by the District Registrar	Rs.30,21,453/- & Rs.1547/-

The aforesaid document has been impounded by the Sub Registrar based on the following clauses found in the instant document.

In Page No.3 Sl.No.3 "*Without prejudice to the foregoing, while the possession of the PROPERTY is said and shall remain with the MORTGAGOR/BORROWER, however, the MORTGAGEE shall have the right to take possession of the Property and sell or cause the sale of the property to its nominee or a third party, without the intervention of the court, if an event of default occurs under the Loan Agreement or the BORROWER/Sand/or MORTGAGOR is in default or breach of this Deed or the Loan Agreement, including on its failure to make due repayment of any Outstanding Amounts due to the Mortgagee under the Loan Agreement. The amount accruing to the Mortgagee from the sale of the said property shall be utilized towards the repayment of the Outstanding Amounts due to the Mortgagee under the Loan Agreement and any shortfall shall be paid forthwith by the Mortgagor and/or the Borrower.*"

In Page No.6 Sl.No.16 "*The BORROWER/S AND MORTGAGOR agree that if the BORROWER/S commits default in making the payment of a repayment installment due under the Loan Agreement and/or of any Outstanding Amounts, then the MORTGAGEE shall be entitled to call back the entire amount of loan with interest then due and payable in accordance with the manner prescribed in the Loan Agreement, in that case the BORROWER/S AND/OR MORTGAGOR will have*

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to make the payment forthwith and if the BORROWER/S AND/ MORTGAGOR fails to do so, MORTGAGEE will be entitled to enforce the mortgage and sell or the cause the sale/lease or cause such a lease to be entered into in relation to the PROPERTY by virtue of rights available in law and by virtue of this Deed."

Relying on the aforesaid recitals, the District Registrar held that the Mortgagee is conferred with power to act as the Attorney of the Mortgagor and to execute any deed, including a sale deed. Based on the above understanding the District Registrar classified the deed as comprising two distinct matters viz., Article 40(b) of the Indian Stamp Act, 1899 {Mortgage without possession of the Property) and Article 48(e) of the said Act (Power of Attorney to sell the immovable property granted for consideration). Accordingly deficit stamp duty and penalty have been determined by the District Registrar. Aggrieved over the same present Revision petition has been filed before the Chief Controlling Revenue Authority cum Inspector General of Registration.

3) The petitioner through his counsel was heard by the Inspector General of Registration on 16.5.2024 and also submitted a written statement on 21.5.2024. The main contentions put-forth by the Revision petitioner are as follows:

(i) The District Registrar has failed to consider that in Clause 14 of the deed it is clearly stated that "the Possession of the property shall remain with the Mortgagor".

(ii) The instant document is executed as only simple mortgage without handing over the possession of the Mortgage property and hence the District Registrar conclusion is to be set aside.

(iii) The District Registrar has failed to consider that as per Clause 3 only in case the Mortgager/Borrower fails in repayment of loan, the Mortgagee is entitled

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to take the possession of the property. 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 the default is committed by the mortgagor.

4) Contents of revision petition, connected records received from the District Registrar, arguments advanced on behalf of the petitioner have been carefully examined by me.

The recitals of the document relied upon by the District Registrar provide that the Mortgagee shall have the right to take possession of the property and sell or cause the sale of the property if an event of default occurs under the Loan Agreement. In this regard CCRA cum IGR order No.24049/P1/2016 dated 2.6.2016 passed in respect of a similar document is noteworthy. The said order dated 2.6.2016 held that the mortgage document dealt there under is classifiable only under Article 40(b) by observing that "*the powers to sell the property granted by the Mortgagor under the subject document are not absolute and final and therefore this document cannot by any stretch of imagination be treated as a Power for Consideration attracting levy of additional stamp duty as prescribed under Article 48(e) of Schedule I to the Indian Stamp Act, 1899.*"

In light of aforesaid order dated 2.6.2016 the document in question is classifiable under Article 40(b) of the Indian Stamp Act, 1899. Accordingly the order 1st cited is hereby set aside and revision petition 2nd cited is allowed.

Sd/-Dinesh Ponraj oliver /- 22.08.2024
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

District Registrar (Inspection)

23/8/24

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To

1) Mr.V.S.J.Dinakaran,
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2) M/s.C.Sankar & Associates,
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3) District Registrar,
Coimbatore (North)
(With original file)

Copy to: Stock File.

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