

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-07-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.18188 OF 2004

A.I.D. Rozario
Old No.28/2, New No.26,
Erren Stret, Vepery,
Chennai 600 007.

.. Petitioner

Vs.

1. S. Joseph Premkumar
S/o.S. Santharaj
G-98, 10th Cross Street,
Anna Nagar (E),
Chennai 600 102.
2. S. Santharaj
G-98, 10th Cross Street,
Anna Nagar (E),
Chennai 600 102.
3. S. Antony Vijaikumar
S/o.S. Santharaj
No.25, Srinivasa Road,
Mylapore, Chennai 600 004.
4. The Branch Manager,
Tamil Nadu Industrial Investment
Corporation Ltd.,
(Sponsored by the Government of
Tamil Nadu)
Special Recovery Branch, Division-I
692, Anna Salai, Nandanam,
Chennai 600 035.

.. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records relating to the issue of impugned General Notice and Mahazaar dated 25.6.2004 of the 4th respondent attaching the petition property, quash the same and direct the 4th respondent not to issue any further Notice

and/or Mahazaar u/s.29 of The State Financial Corporation Act, 1951, till the disposal of O.S.No.7459 of 1996 filed by the petitioner and pending on the file of VIII Asst. City Civil Court, Chennai.

For Petitioner : Mr.N.V. Srinivasan for
M/s.N.V.S. & Associates

For Respondent-4 : Mr.Jeyesh Dolia
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J U D G M E N T

The present petitioner has prayed for quashing the General Notice and Mahazaar dated 25.6.2004, whereunder the fourth respondent has purported to attach the disputed property, and for a further direction to the fourth respondent not to issue any further notice or mahazaar under Section 29 of the State Financial Corporation Act, till the disposal of O.S.No.7459 of 1996, on the file of VIII Asst. City Civil Court, Chennai, filed by the petitioner and pending against respondents 1 to 3.

2. The aforesaid suit filed by the petitioner is a suit for specific performance of contract to enforce the agreement dated 1.3.1984. It is alleged by the petitioner that such agreement was between the petitioner and the first respondent, represented by his father, namely, the second respondent. It is the further case of the petitioner that the respondents 1 and 3 unilaterally and unlawfully cancelled the agreement and treated as if the petitioner was a tenant and, subsequently, the second respondent, representing the first respondent, created a sham transfer by registering a sale deed being Document No.129 of 1989 dated 25.1.1989 in favour of the third respondent.

3. Even though counter affidavit has not been filed on behalf of the fourth respondent Corporation, it was stated by the counsel at the time of hearing of the writ petition that the property in question had been given as a collateral security by Respondent No.3 for the credit facility availed by his wife, Proprietress of M/s. Kasalona Restaurant, and since the loan has not been repaid, steps have been taken for attachment of the present property in exercise of power under Section 29 of the State Financial Corporation Act.

4. In the writ petition, it is the contention of the petitioner that possession of the disputed property having been given in part performance of the sale agreement dated 1.3.1984 as supplemented on 31.7.1984, the possession of the petitioner is to be protected. It is the further contention of the petitioner that transfer by Respondent No.2 representing Respondent No.1 in favour of Respondent No.3 was unlawful and sham and had not conveyed any title or interest.

5. The validity of the aforesaid stand taken by the petitioner can be decided only in the pending suit. Writ jurisdiction is not the appropriate jurisdiction to decide such disputed questions affecting civil rights of the parties. The respondent Corporation in the purported exercise of statutory power under Section 29 of the State Financial Corporation Act, had attached the property. If ultimately it is found that the third respondent was not the real owner and the petitioner has right over the property, such matter is to be thrashed out between the parties in the pending suit or in any other appropriate proceedings. Under Section 29 of the State Financial Corporation Act, if the property is sold, the purchaser of the property steps into the shoes of the person who has given the property as collateral security and cannot have a better title. In other words, if the person has given collateral security, actually he did not have any right, and any action taken under Section 29 would not convey a better right.

6. Having regard to all these aspects, the relief claimed for by the petitioner cannot be granted in this writ petition and it would be open to Respondent No.4 to take further steps in accordance with Section 29 of the State Financial Corporation Act. However, in order to avoid unnecessary complications, it is made clear that if and when Respondent No.4 take steps to auction the property in exercise of power under Section 29, it shall be indicated that the property in dispute is the subject matter of the pending suit in O.S.No.7459 of 1996, on the file of VIII Asst. City Civil Court, Chennai, so that the purchaser of the property shall not be taken unaware and shall not be kept in dark regarding history of litigations.

7. Subject to the aforesaid observation, the writ petition is disposed of. No costs.

Sd/
Asst.Registrar

सत्यमेव जयते
/true copy/

Sub Asst.Registrar

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To

1. The Branch Manager,
Tamil Nadu Industrial Investment Corporation Ltd.,
(Sponsored by the Government of Tamil Nadu)
Special Recovery Branch, Division-I
692, Anna Salai, Nandanam, Chennai 600 035.

2.The Registrar
City Civil Court, Madras.

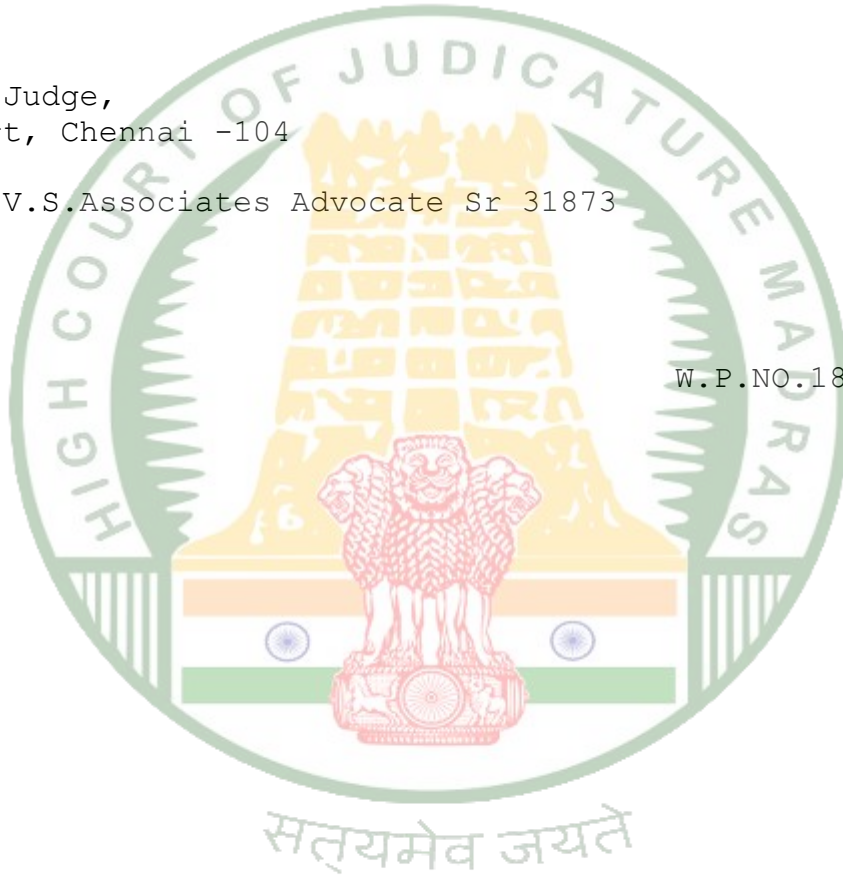
Copy to

The VIII Asst. Judge,
City Civil Court, Chennai -104

+1cc to M/s. N.V.S.Associates Advocate Sr 31873

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W.P.NO.18188 OF 2004



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