In the High Court of Judicature at Madras

Reserved on : 16.02.2015
Dated : 24.02.2015

CORAM:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.23298 of 2014
and
M.P.Nos.1 & 2 of 2014

A.k.Vijayalakshmi ... Petitioner

Vs.

1. The Chairperson,
   Debt Recovery Appellate Tribunal,
   Chennai-600 008.

2. The State Bank of India,
   Commercial Branch,
   Industrial Estate,
   Bangalore-560 044.

3. Prakash V Shenoy ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorari, calling for the records pertaining to the order passed by the First Respondent namely, the Chairperson, Debt Recovery Appellate Tribunal, Chennai, in his proceedings, bearing M.A.No.97/2007, dated 25.07.2014 and quash the same.

For Petitioner : Mr.P.Rajendran

For Respondent-2 : M/s.S.Seetha
for M/s.Rajinish Pathiyil

For Respondent-3 : Mr.A.Edwin Prabakar

O R D E R

[Order of the Court was made by
M.VENUGOPAL, J.]

The Petitioner has focused the present Writ Petition praying for passing of an order by this Court in calling for the records relating to the order passed by the First Respondent/Chairperson, Debt Recovery Appellate Tribunal, Chennai, in M.A.No.97/2007, dated 25.07.2014.

2.According to the Petitioner, she is one of the Legal heirs of late A.Kasturirangachar (who was originally the Sixth Respondent) and a third party guarantor to the loan extended by the Second Respondent Bank to one K S D Extrusions. Her father mortgaged 'C Schedule property' namely, the property bearing No.7, Eastern Portion of the House formerly bearing No.49, situated at I Main Road, I A Cross, Krishna Block, Seshadripuram, Bangalore 560 020 with building thereon with stated boundaries and in fact, the said property came into the hands of her father by means of a registered partition deed dated 05.10.1961. As a matter of fact, her father inherited the aforesaid property (which was one among the properties of the Hindu undivided Family property) which has a character of an ancestral property.

3.The stand of the Petitioner is that when her father stood as one of the guarantors for the loan extended to K S D Extrusions, the Bank insisted that along with her father (who was not in good health) her brother, necessarily had to sign all the loan documents as a guarantor and this proves beyond doubt that C Schedule property is one among the Hindu Undivided Family Property. The Bank insisted that all the male members of the family to sign the loan documents which was complied with without an approval of the female family members.

4.It is the version of the Petitioner that Hindu Undivided Family property was mortgaged and it was not for the benefits of her father and brother but it was mortgaged in the capacity as a third party guarantor to the loan extended to K S D Extrusions by the Second Respondent/Bank.

5.Advancing his argument, the Learned Counsel for the Petitioner contends that in O.A.855 of 1999 none of the female members were originally party to the proceedings and the Petitioner along with her sisters were brought on record as legal heirs of the Sixth Respondent (Late father A.Kasthurirangachar) and all the family members were exonerated from making any claim, which was not challenged by the Second Respondent/Bank. In fact, O.A.No.855 of

1999 came to be allowed by the Debt Recovery Tribunal, Bangalore, certifying the claim of the Second Respondent at Rs.1,11,22,208.45 through its order dated 26.12.2003 and immediately, the Respondents 1 to 6 projected an application, praying to set aside an ex-parte order dated 26.12.2003. The said application was numbered as M.A.No.35 of 2004 and the same was filed within the period of limitation specified and when the matter was taken up, the Second Respondent/Bank came forward to resolve the issue amicably with the main borrower.

6.The Learned counsel for the Petitioner brings it to the notice of this Court that the Second Respondent/Bank had agreed to accept the payment of Rs.45,00,000/- only as against the amount awarded in O.A.No.855 of 1999 dated 26.12.2003 and accordingly, the Bank issued a letter dated 29.11.2004, mentioning the terms of settlement. The Learned counsel for the Petitioner submits that in terms of settlement letter dated 24.11.2004, the main borrowers had to make a conditional payment of Rs.90,000/- only in token of acceptance of the aforesaid settlement terms and upon filing of memo of the settlement before the Debt Recovery Tribunal, Bangalore and after six months from thereon, the main borrowers had to make the balance payment of Rs.44,10,000/-. In fact, the main borrowers as per the terms of the settlement letter dated 24.11.2004 withdrew the M.A.No.35 of 2004 (filed by them seeking to set aside the ex-parte order dated 26.12.2003).

7.The core contention advanced on behalf of the Petitioner is that the Second Respondent/Bank without complying the condition of filing the memo before the Debt Recovery Tribunal, Bangalore, as per settlement letter dated 29.11.2004, fraudulently made arrangements to bring the properties for sale, which was mortgaged in favour of the Bank, at the time of sanctioning of loan. However, the Petitioner is being one of the members in the Hindu Undivided Family, resisted the auction sale of the C Schedule property. Though the said property is an ancestral property inherited by her father out of the Hindu Undivided Family Property by way of partition deed dated 05.10.1961, indeed, the Recovery Officer inspite of knowing the fact, that the Petitioner's father had inherited the C Schedule property by way of partition, dismissed the application.

8.The Learned counsel for the Petitioner contends that before auction of the property by the Recovery Officer, Bangalore, a suit in O.S.No.5312 of 2005 seeking the relief of partition was filed in respect of C Schedule property. Furthermore, the Petitioner filed an appeal (being aggrieved against the order of dismissal passed by the Debt Recovery Tribunal, Bangalore) before the First Respondent/Debt Recovery Appellate Tribunal, Chennai in M.A.No.97 of 2011 and wherein, originally an order of stay was obtained by her and later, it was modified without providing an opportunity to her.

9.The Learned counsel for the Petitioner draws the contention of this Court that against the modified order passed in M.A.No.97 of 2011 (without providing any opportunity to the Petitioner) one Mrs.Kamala approached this Court by filing a writ Petition in W.P.No.2113 of 2008 and obtained an order of stay, mainly pointing out the issue of settlement which came to be disposed of with a direction and as per the direction, the First Respondent had filed an application seeking to waive the pre-deposit to maintain the appeal in M.A.No.97 of 2007 which was allowed whereby and whereunder the claim against the Legal Heirs of the Sixth Respondent viz, her father was exonerated by the Debt Recovery Tribunal, Bangalore. However, without considering the legal aspect of the matter, the First Respondent/Debt Recovery Appellate Tribunal, Chennai passed the impugned order in M.A.97 of 2007 dated 25.07.2014. Therefore, as an aggrieved person, she has filed the present writ petition.

10.Per contra, it is the contention of the Second Respondent/Bank that the Petitioner's late father A.Kasturirangachar mortgaged the property in question for securing the repayment of loan by K S D Extrusions, a registered partnership firm. The said firm in connection with its business had availed the loan and the loan was secured by offering the property in dispute as a collateral security for the repayment of amount due with accrued interest at agreed rate for all the credit facilities availed by the firm.

11.Continuing further, the Learned counsel for the Second Respondent/Bank proceeds to submit that the agreed credit facilities were sanctioned during the year 1993 in favour of the said firm and the firm committed default in discharging its liability and therefore, the Bank filed the claim petition for recovery of sum of Rs.1,11,22,208.45 against the firm and seven others in O.A.855 of 1999 before the Debt Recovery Tribunal, Bangalore. Indeed, the firm was arrayed as D1, petitioner's father was arrayed as D6 along with his son Srinivas who was shown as D7 in the said O.A.855 of 1999. As a matter of fact, O.A.855 of 1999 was filed on 21.10.1999 and the same was decreed on 26.12.2003.

12.At this stage, it is to be pointed out that during the pendency of original application, the petitioner's father expired and that his LRs were brought on record and in fact, the Petitioner was arrayed as 6th defendant. In reality, the Petitioner contested the O.A.855 of 1999 on merits and a decree was passed on 26.12.2003. Later, recovery proceedings were initiated by the Recovery Officer in D.C.P.No.3095 and that a sale proclamation was made on 09.08.2006 and that the property was auctioned on 12.09.2006.

13.The Learned counsel for the Second Respondent brings it to the notice of this Court that from the date of decree dated 26.12.2003 till date of public auction i.e., on 12.09.2006 for nearly three years, the writ Petitioner had not resorted to further course of action in the subject matter in issue.

14.The Learned counsel for the Second Respondent refers to the order dated 14.09.2006 passed by the Recovery Officer in the claim petition filed by the Petitioner and the same runs as under:

> "On going through the facts submitted by both the parties, it is observed that it has been held by Hon'ble Tribunal that D6 a to f have failed to establish Schedule C property is an ancestral property and accordingly, held that bank is entitled to bring the property for sale. Therefore, Recovery Officer cannot go beyond the Recovery Certificate in view of the Section 26(1) of RDDB Act 1993. Hence, the objections are dismissed. No order as to cost."

Consequently, the Petitioner filed A.O.R.No.12 of 2006 before the Debt Recovery Tribunal, Bangalore being aggrieved by the order passed by the Recovery Officer in D.C.P.No.3095. Further the Tribunal, on 19.06.2007 passed orders in rejecting the Petitioner's claim by observing that she has no independent legal right over the property except as the legal heir of Late A.Kasturirangachar who mortgaged the property with the bank. Moreover, she preferred M.A.No.97 of 2007 before the First Respondent/Debt Recovery Appellate Tribunal, Chennai, as against the order passed by the Debt Recovery Tribunal, Bangalore in A.O.R.No.12 of 2006 dated 19.06.2007 and ultimately, on 25.07.2014, the First Respondent/Appellate Tribunal dismissed the appeal among other things observing that "... order passed by the Presiding Officer, Debt Recovery Tribunal, Bangalore in A.O.R.No.12 of 2006 requires no interference".

15.The Strenuous legal plea taken on behalf of the Second Respondent Bank is that the Debt Recovery Tribunal in O.A.855 of 1999 by means of an order dated 26.12.2003 had clearly held that the petitioner and other legal heirs had not tendered any evidence to prove that late A.Kasturirangachar has no right to mortgage the property as the same was an ancestral property and since the said was not challenged by the Petitioner before the higher Forum, the same has become conclusive and final between the parties.

16.The Learned counsel for the Second Respondent vehemently contends that the defendants in O.A.No.855 of 1999 filed an application to set aside the order dated 26.12.2003 before the Debt Recovery Tribunal and the application was numbered as M.A.No.35 of 2004. The borrowers projected an application to compromise the issue by paying Rs.45 lakhs against the dues and deposited a sum of Rs.90,000/- as part payment and in respect of the remaining sum of Rs.44,10,000/-, they issued a cheque dated 05.07.2006, which on presentation, came to be dishonoured with an endorsement, 'insufficient funds'. In such situation, the Second Respondent/Bank by means of communication dated 01.08.2006 had informed the borrowers that the compromise stood withdrawn as the borrowers had not complied with the conditions specified in the compromise memo.

17.In this connection, the Learned counsel for the Second Respondent/Bank submits that in M.A.35 of 2004 (filed by the defendants 1 to 6) the Debt Recovery Tribunal had directed the parties to deposit Rs.20 lakhs and deferred action by the Recovery Officer till 11.11.2005. Because of the defendants failure to deposit the said amount, the Debt Recovery Tribunal was forced to pass an order on 11.11.2005, directing the Recovery Officer to proceed in accordance with law.

18.Besides the above, it is the stand of the Second Respondent/Bank that the Bank in order to recover the dues in respect of credit facilities availed by the firm in question and also, that they are not in a position to take possession of the property and hand over the same to the Third Respondent who is the subsequent purchaser or owner of the property as on date by virtue of the sale certificate issued.

19.At this stage, it is not out of place for this Court to make a significant mention that in O.A.855 of 1999 filed on 21.10.1999, a decree came to be passed on 26.12.2003 and the auction was conducted by the Debt Recovery Tribunal, Bangalore on 12.09.2006 and the sale was confirmed by an order dated 04.07.2007 by the Recovery Officer, Debt Recovery Appellate Tribunal, Bangalore and the sale certificate was issued in favour of the Third Respondent on the same date.

20.The Learned counsel for the Second Respondent/Bank aptly points out that one Mrs.Kamala filed W.P.2113 of 2008 before this Court raising similar pleas taken by the present writ Petitioner and the same was disposed of by this Court with a direction to Debt Recovery Appellate Tribunal to consider the issue pending before it. Aggrieved by the order, again the said Kamala filed W.P.Nos.24590 & 22872 of 2012 before this Court and this Court by a common order on 12.09.2012, disposed of the writ petitions and these orders had become final, conclusive and binding him interse. To put it succinctly, the forceful plea of the Second Respondent is that the Petitioner cannot agitate the same issues before this Court which had become final, all the more when she and others had not established before the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal that late Kasthurirangachar, her father had no right to mortgage the property as the same was an ancestral one.

21.It is the submission of the Learned counsel for the Third Respondent that a reading of the Partition Deed dated 05.10.1961 (registered as Document No.1972 Book 1 Volume 1840 in the office of Sub Registrar) clearly points out the absolute right of Petitioner's father (Late Kasturirangachar) and in fact, the plea of the Petitioner is that the property in question be ancestral was rejected by the Debt Recovery Tribunal, Bangalore by means of an order dated 26.12.2003 and the said order had become final because of the reason, no appeal was filed against the said order. Moreover, the Learned counsel for the Third Respondent refers to Term No.2 of the registered Partition Deed dated 05.10.1961 which enjoins as under:

> "Each of the said parties 1 to 7 hereby releases his interest in the properties allotted to the other parties and convey to each of them separately his right, title and interest therein so as to constitute each party the sole and absolute owner of the properties allotted to that party free and discharged from all claims and demands of others thereto or concerning therewith as from the date of this deed"

22.The Learned counsel for the Third Respondent contends that the Third Respondent participated in the auction proceedings held on 12.09.2006 and in fact, a public notice dated 22.08.2006 was issued by the Recovery Officer and in the auction, the Third Respondent was the highest bidder, who paid the entire sale consideration of Rs.34.50 lakhs on 27.09.2006.

23.Apart from that on behalf of the Third Respondent, it is brought to the notice of this Court that in A.O.R.No.12 of 2006 (filed by the Petitioner) on 09.05.2007 while dismissing the same it was observed that the Petitioner's father was the absolute owner of the property and he himself mortgaged the property to the Bank and therefore, the Petitioner has no rights in the property in question. Besides that even M.A.No.97 of 2007 filed by the Petitioner before the Debt Recovery Appellate Tribunal came to be dismissed on 25.07.2014.

24.Be that as it may, on a careful consideration of respective contentions and in view of the detailed qualitative and quantitative discussions mentioned supra and also based on the clear cut finding rendered in O.A.No.855 of 1999 passed by the Debt Recovery Tribunal, Bangalore to the effect that C Schedule property is not an ancestral one and further, that the said order is conclusive and binding nature between the parties (including the writ Petitioner) and also, in view of the candid fact that the Petitioner's father and brother had mortgaged the 'C Schedule property' as one of the third party guarantor in respect of the loan extended to K S D extrusions, and in view of the fact that the Third Respondent had purchased the property in the year 2006 and till date, he is not in a position to reap the benefits of the auction purchaser (as he had parted with sizeable amount in purchasing the property), this Court holds resultantly that the Writ Petition filed by the Petitioner is not only an otiose one but also devoid of merits. Consequently, the Writ Petition fails.

25.In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

DP

To

1. The Chairperson,
   Debt Recovery Appellate Tribunal,
   Chennai-600 008.

2. The State Bank of India,
   Commercial Branch,
   Industrial Estate,
   Bangalore-560 044.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.10130
+1cc to Mr.Rajinish Pathiyil, Advocate, S.R.No.9926
+1cc to Mr.Edwin Prabakar, Advocate, S.R.No.10082

W.P.No.23298 of 2014
and
M.P.Nos.1 & 2 of 2014

BR(CO)
CA(03/03/2015)