

**THE HON'BLE SRI JUSTICE RAMESH
RANGANATHAN**

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTI

W.P.No.39327 of 2014

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

A peculiar relief is sought for in this writ petition. The petitioners herein are the children of the 3rd respondent who furnished security for a loan obtained by the 4th respondent from the 1st respondent-Bank. It is the petitioners' case that, pursuant to partition deed dated 24.12.1998, the subject property was partitioned between the 3rd respondent and his brothers; the registered partition deed refers to the fact that the property is ancestral property; the 3rd respondent ought not to have furnished the subject property as security for the loan obtained by the 4th respondent; respondents 1 and 2 ought not to have accepted the surety furnished by the 3rd respondent; and as the 1st respondent-Bank had acted illegally in accepting the surety furnished by the 3rd respondent, a mandamus should be issued by this Court declaring the surety, furnished by the 3rd respondent, as null and void.

The surety was furnished in the year 2009. The petitioners claim to be blissfully unaware of the fact that such a security was furnished till a sale notice was issued on 24.02.2014. Even more curious is that the 3rd respondent had questioned the auction notice dated 24.02.2014, in S.A.No.390 of 2014 filed before the Debt Recovery Tribunal and filed I.A.No.2063 of 2014 seeking stay of all further proceedings. The counsel for the 1st respondent-Bank informed the Debt Recovery Tribunal that the Bank proposed to withdraw the auction notice dated 24.02.2014 and to postpone the auction. On the ground that no memo was filed to this effect, the Debt Recovery Tribunal granted stay. The

petitioners have now invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking the aforementioned relief.

The question whether the petitioners are entitled to a share in the subject property, and whether or not the 3rd respondent should have furnished the said property as surety for a loan obtained by the 4th respondent from the 1st respondent-bank, are all disputed questions of fact which this Court would not, ordinarily, examine in proceedings under Article 226 of the Constitution of India. The petitioners have a remedy, under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to question the sale notice, if any, issued later by the 1st respondent-Bank. As the petitioners have a statutory remedy, which is effective and efficacious, we see no reason to exercise jurisdiction under Article 226 of the Constitution of India, to interfere.

The writ petition fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

26th February 2015.

Note: Issue C.C. by 02.03.2015.

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Date: 26.02.2015

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