

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2016

CORAM

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M.VENUGOPAL

W.P.No.6831 of 2016
and
W.M.P.No.6085 of 2016

Rajeswari ..Petitioner

Vs.

1.The Branch Manager,
Indian Bank, Dharmapuri Branch,
D.D.D.C. Building,
Pennagaram Road,
Dharmapuri Town and Taluk,
Dharmapuri.

2.The Authorised Officer/
Assistant General Manager,
Indian Bank, Dharmapuri.

3.Subramanian

4.Muniappan

5.S.Venkatachalam

6.Krishnammal

..Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of declaration declaring that sale notice issued by the first respondent dated 21.01.2016 and published in The New Indian Express dated 22.01.2016 in respect of the properties mortgaged by the respondents 3 to 6 with the first respondent is null and void, unjust, arbitrary and illegal.

For Petitioner .. Mr.A.Sirajudeen

For Respondents .. Mr.Jayesh B.Dolia for R1 & R2

ORDER

(Order of the Court was made by SATISH K.AGNIHOTRI, J.)

Mr. Jayesh B. Dolia, learned counsel, accepts notice on behalf of respondents 1 and 2. Notice to respondents 3 to 6 is dispensed with, at this stage, as no adverse order is passed against them in this writ petition. Thus, with the consent of the learned counsel appearing for the petitioner and the learned counsel for respondents 1 and 2, the writ petition is taken up for final disposal.

2. Seeking to declare the sale notice dated 21 January 2016 issued by the first respondent and published in The New Indian Express dated 22 January 2016, in respect of the properties mortgaged by respondents 3 to 6, as null and void, the petitioner has come up with this writ petition.

3. It is the case of the petitioner that her brother, viz., the third respondent, availed loan from the first respondent Bank by mortgaging the ancestral property and failed to repay the same. Therefore, the bank decided to bring the property for auction, as has been done in the year 2015. Being the co-parcener of the ancestral properties, the petitioner challenged the same by filing S.A.No.309 of 2015 before the Debts Recovery Tribunal-III, Chennai (for short "the Tribunal"). The Tribunal directed the petitioner to deposit a sum of Rs.50 lakhs. Since the said order was not complied with, the Tribunal vacated the interim order. While so, the second respondent bank published an advertisement to sell five more properties worth more than a crore. Hence, the present writ petition.

4. Indisputably, the petitioner's brother, who is the third respondent herein, is a borrower. The property under the joint ownership of the petitioner's brother and the petitioner was mortgaged as secured asset. In default, the secured asset, as specified in the auction notice dated 21 January 2016, is put on auction to be held today (26 February 2016).

5. Learned counsel appearing for the petitioner submits that a sum of Rs.25,00,000/- has already been deposited on 24 February 2016 and 25 February 2016. He would further submit that the petitioner is ready and willing to deposit the balance outstanding amount within a reasonable time.

6. In that view of the matter, leaving it open to the secured creditor to consider the petitioner's representation, the auction to be held today shall go on. However, the same shall not be confirmed for a period to be decided between the secured creditor and the petitioner.

7.With the aforestated observation and direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

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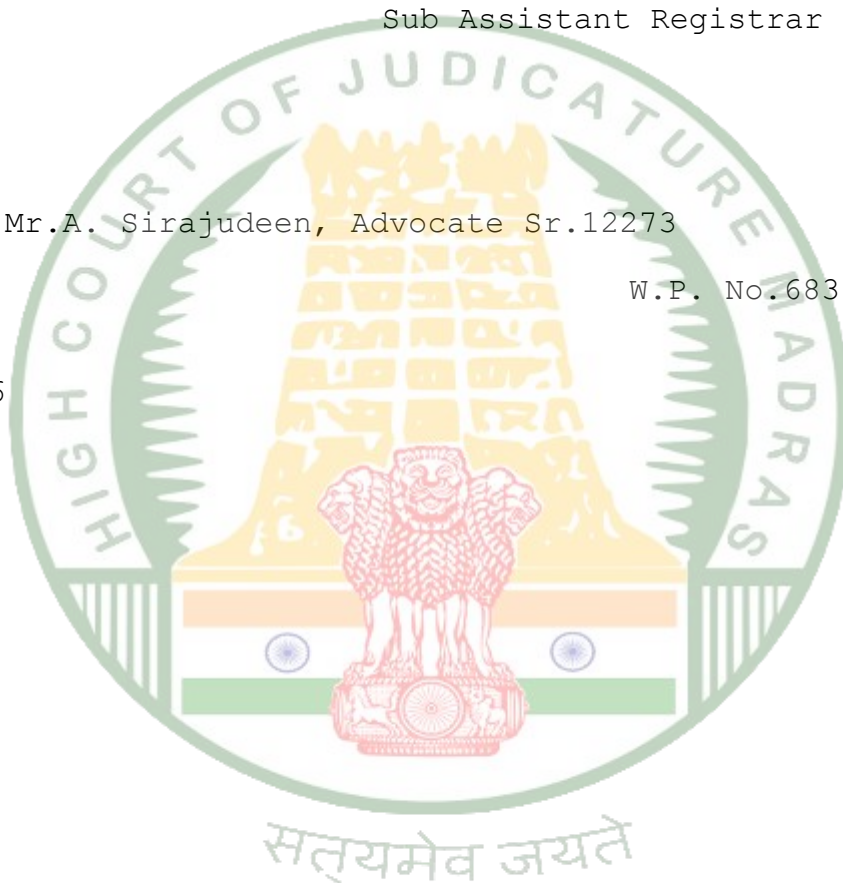
Sub Assistant Registrar

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+ 1 cc to Mr.A. Sirajudeen, Advocate Sr.12273

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