

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

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THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.8237 of 2016
and W.M.P.No.7343 of 2016

K.Nallammal

... Petitioner

Vs.

1. The Deputy Registrar of
Co-operative Societies,
Namakkal,
Namakkal District.
2. S.S.336, Nachippatti
Primary Agricultural Co-operative
Credit Society Limited, rep.by its President
Nachippatti,
Namakkal District,
3. P.Kumaran ... Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records relating to the order of the 1st respondent dated 9.4.2015 in C.E.P.No.1/2015/SF(7) and quash the same.

For Petitioner : Mr.K.Selvaraj
For Respondent : Ms.T.P.Savitha,
Govt.Advocate

सतगमेव जयते
O R D E R

The petitioner has filed this writ petition praying for issuance of writ of certiorari to quash the proceedings of the 1st respondent dated 9.4.2015.

2. The impugned proceedings is in fact a conditional attachment order under Section 167 of the Tamil Nadu Cooperative Societies Act, 1983, in and by which, the petitioner's husband - P.Kumaran, against whom, proceedings have been initiated by filing an application before the Registrar under Section 90 of the Act. In order to secure the interest of the 2nd respondent Society and in the event of they have been able to obtain an order in the proceedings pending before the 1st respondent

society, appears to have filed an application before the 1st respondent, pursuant to which the conditional order has been passed.

3. The petitioner would state that she is a teacher working in a Government School in Rasipuram and from and out of her own income she has purchased vacant land measuring an extent of 11 cents in S.No.21/2B in Alavaipatti village, Namakkal District by sale deed dated 9.2.2011 registered as document No.736 of 2011 on the file of Sub-Registrar, Rasipuram. The petitioner is said to have availed a housing loan from Canara Bank, Rasipuram Branch and constructed a house in the said property and she is residing there with her family members. The petitioner's case is that she is not a member of the 2nd respondent Society, she has not given her property as security to the 2nd respondent at any point of time nor she has stood as a guarantor for her husband who was a former employee of the 2nd respondent. Therefore, it is submitted that the impugned notice of attachment cannot be proceeded with against the petitioner's property. It is submitted by the learned counsel for the petitioner that though the schedule in the impugned proceedings shows two survey numbers viz., 21/2B and 26/3F, in effect, it is a sub-division and a common patta has been granted in patta No.101. However, this aspect can be looked into by the 1st respondent.

4. Heard Mr.K.Selvaraj, learned counsel for the petitioner and Ms.T.B.Sivitha, learned counsel accepting notice for the respondents.

5. The issue raised in this writ petition has been earlier raised before this Court in several cases and in one such case viz., K.Amuda Vs. Deputy Registrar of Societies, Cheyyar Circle and another in W.P.No.34355 of 2015, similar contention was raised stating that the petitioner therein was the absolute owner of the property and she was not an employee of the Society nor she was a Board of Director at any point of time and nothing to do with the said process. Therefore, in the said case, the immovable property, which was sought to be brought in auction, was resisted. The Court considered the issue raised and pointed out that the petitioner therein, having not been a judgment debtor, without notice to the owner of the property, the property could not be brought for sale and accordingly notice was set aside and liberty was granted to Sale Officer in the said case to issue notice and then proceed in accordance with law. It has to be pointed that in the said case the proceedings had been taken upto the stage of sale and it is only then the petitioner therein had approached this Court. In another writ petition in the case of R.Eswaran Vs. Deputy registrar of Cooperative Societies, Dharapuram in W.P.No.106 of 2016, challenge was made to a conditional attachment order passed under Section 167 of the Tamil Nadu Cooperative Societies Act.

After considering the statutory conditions viz., Section 167 and Rule 140 of the Cooperative Societies Rules, 1983 it was pointed out that no orders have been passed in terms of Section 167(1) calling upon the petitioner therein to furnish security and straight away an order came to be passed and the petitioner therein was directed to furnish the security.

6. Thus, by applying the decisions to the instant case, it has to be pointed out that if the petitioner claims any independent right to the property described in the schedule of the impugned notice, she has to establish the same in the manner known to law. However, the 1st respondent is empowered to adjudicate into the matter and then come to a conclusion as to who is the true owner of the said property and then proceed in accordance with law.

7. In the light of the above, the writ petition is disposed of by directing the 1st respondent to keep in abeyance further action pursuant to the order impugned dated 9.4.2015, with a further direction to the petitioner to submit her objection to the said notice within a period of four weeks from the date of receipt of a copy of this order. Along with the objections, the petitioner shall enclose all documents in support of her claim. On receipt of the same, the 1st respondent shall consider the petitioner's contentions and pass a reasoned order on merits and in accordance with law. The 1st respondent is directed to complete the said process and pass final orders within a period of six weeks from the date on which the petitioner submits her objections. Till orders are passed by the 1st respondent in terms of the above direction, the property in question shall not be alienated or encumbered by the petitioner. No costs. Connected miscellaneous petition is closed.

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-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Deputy Registrar of Co-operative Societies,
Namakkal,
Namakkal District.
2. The President,
S.S.336, Nachippatti Primary Agricultural Co-operative
Credit Society Limited,
Nachippatti,
Namakkal District,

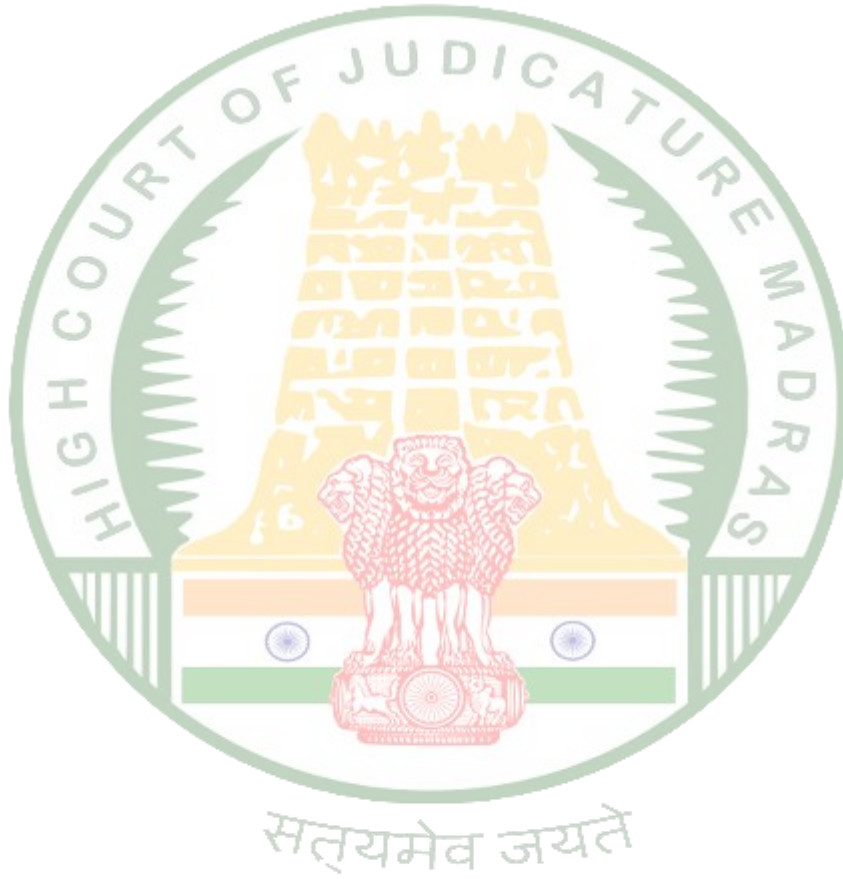
+ 1 cc to Mr.K.Selvaraj, Advocate SR 14579

+ 1 cc to Mr.L.P.Shanmugasundaram, Advocate SR 14549

+ 1 cc to Govt.Pleader SR 15033

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