



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.A. (MD) .No.491 of 2016 &
CMP (MD) .No.3480 of 2016

The Sale Officer,
Madurai Taluk Co-operative Credit Society,
35, Muthu Natchiar Illam,
K.K.Nagar, Madurai 625 020.

.. Appellant/2nd respondent

versus

1.B.Renuka Devi

.. 1st respondent/petitioner

2.The Sub Registrar,
Sub Registrar Office,
Chokkikulam, Madurai 625 002.

.. 2nd Respondent/1st Respondent

Appeal filed under Clause 15 of Letters Patent against the order in
W.P. (MD) .No.9273 of 2009, dated 17.04.2013.

Prayer in WP(MD). 9273/ 2009 :

Petition filed under Article 226 of the Constitution of India,
praying for the issuance of Writ of Mandamus, directing the 1st
respondent to cancel the entry made in the encumbrance certificate of Re-
Survey No. 12/2 dated 17/06/2003 made by the 2nd respondent of the
petitioners property.

For Appellant : Mr.R.Saravanan

For Respondents: Mr.C.Vakeeswaran for R1
Mr.A.K.Baskara Pandian
Special Government Pleader for R2

JUDGMENT

(Judgment of the Court was made by R.MAHADEVAN ,J.)

The present appeal has been filed against the order, dated
17.04.2013, passed in W.P.(MD).No.9273 of 2009, allowing the writ
petition filed by the first respondent herein and directing the second
respondent herein to cancel the entry in the encumbrance certificate in
respect of Re.S.No.12/2, which was created on 17.06.2003.



2. According to the first respondent/writ petitioner, her husband was working as Senior Assistant in the appellant co-operative society. The said society has alleged that the first respondent's husband has misappropriated huge funds and proceedings were also initiated against him under Section 90 of the Tamil Nadu Co-operative Societies Act, pursuant to the same, the appellant has created an encumbrance in respect of the first respondent's individual property by making entry in the records of the second respondent, which is reflected in the encumbrance certificate, issued by the second respondent herein. The writ court, after hearing both sides, directed the second respondent herein to cancel the said entry. Aggrieved against the same, the appellant is before this Court.

3. The learned counsel for the appellant reiterated the submissions made before the writ Court and further submitted that the first respondent's husband has misappropriated huge funds of the Society and the subject property was purchased during the said period in the name of the first respondent out of the misappropriated funds and the learned Judge failed to consider the same. Hence, the learned counsel prayed for allowing this appeal.

4. Heard Mr.C.Vakeeswaran learned counsel for the first respondent and Mr.AK.Baskara Pandian, learned Special Government Pleader for the second respondent on the submissions of the appellant.

5. A perusal of the impugned order would go to show that the learned single Judge has rightly pointed out that the 1st respondent was not a party to the proceedings and the property in question was not subject matter of attachment in the arbitration proceedings and therefore, the second respondent herein would not be justified in creating encumbrance on the first respondent's property without resorting to procedure established by law. Further, the learned single Judge has rightly pointed out that allowing the writ petition will not preclude the appellant society to initiate appropriate action against the petitioner's husband in accordance with law and to establish that the said property was purchased by the first respondent from and out of the ill-gotten wealth of her husband Boominathan against whom proceedings have already been initiated and culminated in an order of recovery.

6. In view of the above, there is no manifest error apparent in the impugned order and the writ appeal is liable to be rejected. Accordingly, the writ appeal is dismissed. No costs. Connected miscellaneous petition is also dismissed.

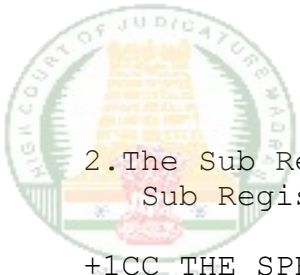
Sd/-
Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Sale Officer,
Madurai Taluk Co-operative Credit Society,
35, Muthu Natchiar Illam,
K.K.Nagar, Madurai 625 0201.B.Renuka Devi



2.The Sub Registrar,
Sub Registrar Office, Chokkikulam, Madurai 625 002.

+1CC THE SPECIAL GOVERNMENT PLEADER, IN SR.NO. 17998

+1cc to MR.R.Saravanan, Advocate in SR.No. 17889

+1CC to M/S.C.Vakeeswaran, Advocate, SR.No. 17546

JIKR

JAM/13.04.16/SK-SKN/ 3P-6C

W.A. (MD) .No.491 of 2016
30.03.2016