

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

W.P.No.13093 of 2016 &
W.M.P.No.11460 of 2016

R.Rani Suseela

... Petitioner

v.

1 The General Manager
City Union Bank Ltd.
149, T.S.R. Big Street
Kumbakonam.

2 The Assistant General Manager
City Union Bank Ltd.
94, Court Street
Tirupur -641 601.

3 The Assistant Manager
City Union Bank Ltd. 94 Court Street
Tirupur -641 601.

4 T.N.Soundararajan

5 S.Dhanalakshmi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the issuance of a writ of Mandamus, directing the 1st
respondent bank to auction the half share of the property belonging to

the 4th respondent as per the final decree passed in O.S.No.79 of 2009 by decree and judgment dated 16.08.2013 and to appropriate the said sale amount towards the outstanding loan amount payable to the 1st respondent bank in respect of OLCC credit facility loan availed by the 4th respondent.

For Petitioner : Mr.A.Natarajan, Senior Counsel
for Mr.V.S.Rajah

For Respondents : Mr.N.S.Varadharajan - for R1 to R3

ORDER

The petitioner has filed the above writ petition to issue a Writ of Mandamus, directing the 1st respondent bank to auction the half share of the property belonging to the 4th respondent as per the final decree passed in O.S.No.79 of 2009 by the decree and judgment dated 16.08.2013 and to appropriate the said sale amount towards the outstanding loan amount payable to the 1st respondent bank in respect of OLCC credit facility loan availed by the 4th respondent.

2.1 It is the case of the petitioner that the 4th respondent, who is her brother, had borrowed a loan from the 3rd respondent bank in the year 1999 and that the property measuring an extent of 2400 sq.ft.

in T.S.No.890/19/3 in New T.S. Ward, "M" Block 23, T.S.No.154 Ares 0-00-04-0 was mortgaged by the father of the petitioner and the 4th respondent as security for the loan availed by the 4th respondent. The father of the petitioner was stood as guarantor for the loan availed by the 4th respondent.

2.2 Since the 4th respondent failed to repay the loan amount, the 3rd respondent bank filed a suit in O.S.No.192 of 2005 on the file of Subordinate Judge, Tirupur to pass a preliminary decree for recovery of a sum of Rs.3,46,513.50 (Rupees three lakhs forty six thousand five hundred and thirteen and fifty paise only) together with subsequent interest and costs.

2.3 The Trial Court, passed a preliminary decree on 31.08.2009 directing the petitioner and the respondents 4 and 5 to pay a sum of Rs.6,04,231/- (Rupees six lakhs four thousand two hundred and thirty one only) together with accrued interest.

3. It is brought to the notice of this court that the respondents 1 to 3 have not proceeded further after the passing of the preliminary

decree in the year 2009. Subsequently, the petitioner filed a suit in O.S.No.79 of 2009 on the file of District Court, Coimbatore for partition and separate possession, as against the 4th respondent. The Trial Court, passed a preliminary decree and subsequently passed a final decree in the said suit allotting 1200 sq.ft. to the petitioner.

4. Mr.A.Natarajan, learned Senior Counsel, appearing for the petitioner submitted that the decree passed in O.S.No.79 of 2009 has become final. Further, the learned Senior Counsel submitted that pursuant to the preliminary decree passed in O.S.No.192 of 2005, the respondent bank has not initiated any further proceedings. Now, the contention of the petitioner is that since she was allotted half share in the property mortgaged by her father with the 3rd respondent bank, the respondents 1 to 3 should bring the property which belongs to the 4th respondent for sale and not her property. The learned Senior Counsel also submitted that both the properties belonging to the petitioner and the 4th respondent were divided by metes and bounds and therefore, it would be suffice to sale the property belonging to the 4th respondent to discharge the decree amount.

5. When the Civil Court has passed a decree against the petitioner and the respondents 4 and 5, I am of the considered view that the remedy open to the petitioner is only to file appropriate application before the Executing Court as and when the bank files Execution Petition. In a Writ Petition, filed under Article 226 of the Constitution of India, the petitioner's remedy, which was affirmed by the Civil Court, cannot be deviated or altered. However, the petitioner has got a remedy under the Civil Procedure Code seeking for appropriate remedy as and when the respondent bank files Execution Petition.

6. In these circumstances, I do not find any merit in the writ petition. Accordingly, the writ petition is dismissed giving liberty to the petitioner to file appropriate application before the Executing Court seeking for the reliefs sought for in the present writ petition. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2017

Index: Yes/No

Rj

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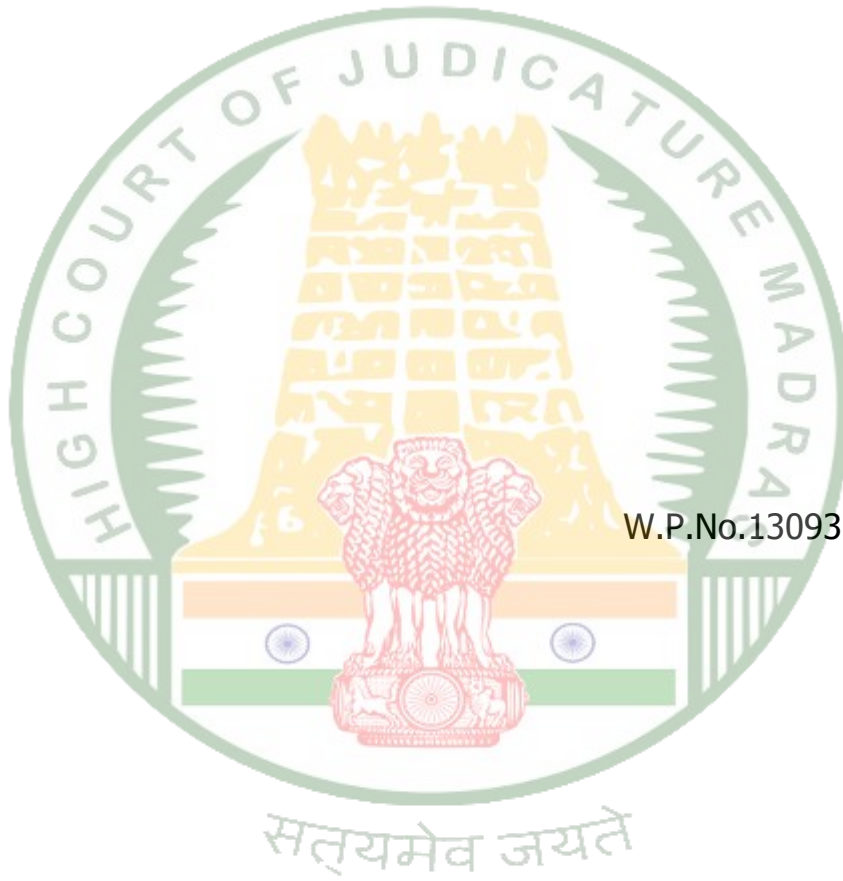
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M.DURAI SWAMY,J.

Rj



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