

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.11.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A.No.1381 of 2017
and
C.M.P.Nos.18922 & 19102 of 2017

R.Rani Suseela ...Appellant/Petitioner
Vs.

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
94, Court Street
Tirupur - 641 601

4.T.N.Soundararajan
Proprietor of Ramya's Garments

5.S.Dhanalakshmi
W/o.T.N.Soundararajan ...Respondents/Respondents

PRAYER: The Writ Appeal has been filed under clause 15 of Letters Patent to set aside the order dated 28.08.2017 made in W.P.No.13093 of 2016 on the file of this Court and to allow the writ appeal directing the 1st respondent bank to auction only the half share of the property belonging to the 4th respondent.

WP.NO.13093 OF 2016: Writ Petition filed Under Article 226 of the Constitution of India praying for 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 for V.S.Rajah

JUDGMENT

(Judgment of the Court was delivered by RAJIV SHAKDER, J.)

1. This appeal is directed against the judgment of the learned Single Judge dated 28.8.2017.

2.The appellant before us is the original writ petitioner.

3.The prayer made in the writ petition is that the 1st respondent bank should be directed not to auction the appellant's half share in the subject property.

4.Briefly, the facts, which, emanated from the record are as follows:

4.1. The appellant's brother, i.e., the 4th respondent, had borrowed money from the 1st respondent bank, i.e., City Union Bank Ltd. The subject property was mortgaged by the father of the appellant and brother, i.e. 4th respondent, as security for the loan. Admittedly, the father of the appellant also stood as a guarantor for the loan availed by the 4th respondent, i.e. The brother.

4.2. Admittedly, the 4th respondent, i.e., the brother, failed to repay, the loan, which propelled the 1st respondent bank to file a civil suit, being: O.S.No.192 of 2005. The suit was filed before the Subordinate Judge, Tirupur. The suit resulted in passing of a preliminary decree in the sum of Rs.6,04,231/-. This decree was passed on 31.08.2009, and was, directed against the appellant, the brother i.e., the 4th respondent and his wife, i.e., the 5th respondent.

4.3. We are told that the 1st respondent bank, to date, has not executed the decree dated 31.08.2009.

4.4. It appears that, in the meanwhile, the appellant filed a civil suit for partition i.e. O.S.No.79 of 2009 before the Additional District Court, Coimbatore.

4.5. The appellant has obtained, in the first instance, a preliminary decree whereby she was allocated in the subject property, an area equivalent to 1200 sq. ft.

4.6. We are told by the learned Senior counsel, who, appears for the appellant that the final decree has also been passed, and is dated 16.08.2013.

4.7. It is in this background that the appellant approached the learned Single Judge with the prayer, to which, we have made a reference above

4.8. The learned Single Judge dismissed the writ petition on the ground that since the 1st respondent bank had obtained a decree against the appellant, the remedy which was available to the appellant was, to move, an appropriate application before the Executing Court as and when the 1st respondent bank approaches the said Court for appropriate relief.

4.9. It is on this basis that the learned Single Judge, refused to entertain the writ petition.

5. Mr.A.Natarajan, the learned Senior Counsel, who appears for the appellant, says the order of the learned single judge is flawed, as he has failed to take into account the fact that since 2009, the 1st respondent bank has not filed the Execution Petition.

5.1. The learned Senior Counsel says that, given these circumstances, the learned Single Judge, ought to have intervened in the matter.

6. According to us, the learned Single Judge has come to the correct conclusion.

6.1. In our opinion, a writ remedy does not lie in matters concerning the private rights.

6.2. There is no element of public law in the action filed by the appellant.

6.3. This apart, the appellant has secured a final decree in the partition suit, as far back as 2013, despite which, no steps have been taken to execute the said decree.

6.4. The fact that the 1st respondent bank has not approached the Executing Court for execution of decree obtained by it, cannot come in the way of the appellant initiating proceedings for executing the decree obtained in the partition suit.

7. Thus, for the foregoing reasons, we find the appeal completely meritless. Accordingly, this writ appeal is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

kas

To

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
94, Court Street
Tirupur - 641 601

+2cc to Mr.V.S.RAJAH, Advocate, S.R.No. 81917

W.A.No.1381 of 2017

GJ(CO)
TR(22/12/2017)

सत्यमेव जयते
WEB COPY