

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.25380 of 2017
and
W.P.M.P.No.26812 of 2017

N.Bhomi Devi .. Petitioner

vs.

1. The Sale Officer/
Cooperative Sub Registrar,
(Housing)
Dharmapuri.

2. K.K.Krishnagiri Co-operative
Housing Societies,
No.35/15A West Link Road,
Co-operative Colony,
Krishnagiri.

3. V.Vediappan .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the 1st respondent herein in bringing the property subject matter of the item 5 of the publication dated 07.09.2017 in the Daily Thanthi either on 26.09.2017 or any other subsequent dates and pass such further orders.

For Petitioner : Mr.S.Annamalai

For Respondents : Mr.L.P.Shanmuga sundaram
Spl. Govt. Pleader for R1 & R2

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ORDER

This writ petition is filed seeking to forbear the 1st respondent herein, from bringing the property, subject matter of the item 5 of the publication dated 07.09.2017 in the Daily Thanthi either on 26.09.2017 or any other subsequent dates, for sale.

2. With the consent of both the parties, the matter is taken up for final disposal, at the stage of admission itself. Mr. L.P. Shanmughasundaram, learned Special Government Pleader undertakes to take notice for the respondents. As directed by this Court, Mr. R. Janardhanan, Accountant of the respondent society was present in the court, to assist learned Special Government Pleader.

3. The learned counsel for the petitioner would submit that the subject property belongs to petitioner's grandfather. Although the brothers and sisters of the petitioner had died, their respective legal heirs are alive. The 3rd respondent, who is the son of petitioner's brother, created various bogus documents and had obtained loan from the State Bank of India. Since the Bank proceeded against the properties, the petitioner filed O.S. No.118 of 2014 for partition, before the Principal District Court, Krishnagiri and the same is pending. Whiles, on 07.09.2017 a sale notice was published in Daily Thanthi, bringing the subject property for sale, in connection with the housing loan availed by the 3rd respondent, from the 2nd respondent.

4. According to the petitioner, the subject property is an ancestral property and the same is yet to be partitioned. In the said suit for partition, the petitioner claims 1/4th share in the suit property and if the entire property is brought for sale, the petitioner's right would be affected and the same cannot be compensated. The learned counsel for the petitioner further submitted that Rule 135(1) of the Tamil Nadu Co-operative Societies Rules, 1988, provides to make a claim on the property in question attached by the authorities and Rule 135(2) mandates that the sale officer has to postpone such sale, pending investigation on such claim. Hence, the petitioner has filed this writ petition, seeking to restrain the 1st respondent from bringing the said property to sale in so far as her 1/4th share is concerned.

5. The learned Special Government Pleader would submit that the petitioner has an efficacious alternative remedy, under Section 135 of the Tamil Nadu Cooperative Societies Rules, 1988, to approach the Sale Officer to file her objection or claim, before approaching this Court. Hence, the writ petition is liable to be dismissed, as not maintainable.

6. In view of the remedy available under Section 135 of the Tamil Nadu Cooperative Societies Rules, 1988, the petitioner shall file her claim or objection before the Sale Officer. On receipt of such claim or objection, the same may be considered by the sale officer, so far as the petitioner's share is concerned.

7. The writ petition is disposed of, with the above observation, at the stage of admission itself. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

avr

To

1. The Sale Officer/Cooperative Sub Registrar,
(Housing)
Dharmapuri.

+1cc to Mr.R.KRISHNAMACHARI Advocate, S.R.No. 70847

+1cc to Mr.V.SELVARAJ Advocate, S.R.No. 70571

+1cc to the Government Pleader, S.R.No. 70817

W.P.No.25380 of 2017
and

W.P.M.P.No.26812 of 2017

GMI (CO)
TR(20/11/2017)

सत्यमेव जयते
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