

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 6223 of 2013

and

M.P. No. 2 of 2013

P. Ganesan

... Petitioner

Vs.

1. The District Registrar,
O/o. The Registrar of Co-op.society,
R.M.S. Complex
Trichy Main Road
Namakkal Circle
Namakkal.

2. The Deputy Registrar of
Co-operative Society
R.M.S. Complex
Trichy Main Road
Namakkal Circle
Namakkal.

3. The General Manager
No.6649 Rasipuram Co-operative
Urban Bank Ltd.,
Rasipuram
Namakkal District.

4. L. Jothi

... Respondents

Prayer : This Writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring the sale proceeding held on 25.11.2004 by the 3rd respondent and consequential order made in Na.Ka. No. 1369/2012 sa.pa. dated 15.06.2012 by the 2nd respondent in respect of the property situated at No.16, Ward No.10, Xavier Road, Namagiripet Village, Rasipuram Taluk, Namakkal District as illegal and to pass such further orders.

For Petitioner : Mr.A. Nagarathinam

For Respondents : Ms. T. Girija,
Government Advocate for R1 & R2
Mr. M.S. Palaniswamy for R3
Mr. S. Kamadevan for R4.

O R D E R

This Writ Petition is filed seeking to declare the sale proceeding held on 25.11.2004 by the 3rd respondent and consequential order made in Na.Ka. No. 1369/2012 sa.pa. dated 15.06.2012 by the 2nd respondent in respect of the subject property as illegal.

2. The learned counsel for the petitioner would submit that the subject property belongs to one Rathinammal, aunt of the petitioner who executed a will on 22.05.1990 in favour of the petitioner. On 27.05.1997 the petitioner and the said Rathinammal, jointly borrowed a sum of Rs.1,00,000/- from the 3rd respondent Society, mortgaging the subject property. Initially, they repaid the instalments regularly but subsequently they were unable to make the payment regularly. Hence, the 2nd respondent initiated proceedings in Claim No.4068 of 1998-99 and passed an award on 18.05.1999 for a sum of Rs.88,473/-. After negotiations, the petitioner obtained the 2nd mortgage loan for a sum of Rs.75,000/- and discharged the award made in Claim No.4068 of 1999. The said Rathinammal died on 31.03.2003. Without giving credit to the discharge of the loan and bringing the legal heirs of the deceased Rathinammal on record, the 1st respondent served a notice of proclamation of sale on 05.11.2004. Based on the auction held on 25.11.2004, the property was sold to 4th respondent herein for a sum of Rs.1,85,000/-. Aggrieved by the said proceedings, the petitioner filed W.P. No.14242 of 2005 and by order dated 20.02.2012 this Court directed the 2nd respondent to hold an enquiry after serving notice to both the parties. After enquiry the 2nd respondent passed an order dated 15.06.2012 rejecting the application of the petitioner to set aside the sale proceedings. Challenging the same, the petitioner has filed this writ petition.

3. The learned Government Advocate for the 1st respondent would submit that the present writ petition is not maintainable before this Court, since there is a provision under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983, for the petitioner to file a revision before the Joint Registrar of Co-operative Societies. It was also submitted that the petitioner can raise all the factual grounds before the said Revisional Authority.

4. The learned counsel for the petitioner also fairly conceded that there is an alternative remedy for the petitioner to file his revision before the Joint Registrar of Co-operative Societies, before approaching this Court.

5. In the light of the above submissions made by the learned counsel for the parties, this court is not inclined to entertain the writ petition. However, the petitioner is

granted at liberty to file a revision before the Revisional Authority, under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983, if so advised, within a period of four weeks from the date of receipt of a copy of this order.

6. The writ petition is dismissed, with the above directions. Consequently, connected Miscellaneous Petition is closed. No costs.

avr

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

1. The District Registrar
O/o. The Registrar of Co-op Society,
R.M.S. Complex
Trichy Main Road
Namakkal Circle
Namakkal.
2. The Deputy Registrar of
Co-operative Society
R.M.S. Complex
Trichy Main Road
Namakkal Circle
Namakkal.
3. The General Manager
No.6649 Rasipuram Co-operative
Urban Bank Ltd.,
Rasipuram
Namakkal District.

+1 CC to Mr.G.PUGAZHENTHI, Advocate Sr.No. 60637/17
+1 CC to Mr.M.S.PALANISAMY, Advocate Sr.No. 60695/17
+1 CC to Mr.S.KAMADEVAN, Advocate Sr.No. 60691/17
+1 CC to the Government Pleader, High court, Madras

Sr.No. 61676/17.

W.P. No. 6223 of 2013
and
M.P. No. 2 of 2013

GP (CO)
MLT 15/11/2017