

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.43699/2016 & WMP No.37504/2016

Planiappa Gounder

... Petitioner

-Vs-

1. The Deputy Registrar of Co-operative Societies,
Thiruchankodu Circle,
Thiruchankodu.
 2. President,
S 1067 Jamein ellampalli,
Primary Agricultural Co-operative Credit Society Ltd.,
Jamein elampalli,
Paramathi Velur Taluk,
Namakkal District.
 3. Ramani
- ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration or any other appropriate Writ or order or direction declaring the proceedings of the 1st respondent herein in his proceedings CEP.01/2016-17/Sa.Pa the order of attachment before judgment passed as null and void and illegal with respect to the petitioner's property situated in survey No.28/3H to an extent of 0.12.5 in Jamein Ellampalli Village, Paramathi Sub Registration District, Namakkal Registration District.

For Petitioner : Mr.S.Balasubramanian

For R-1 : Mr.V.Selvaraj, AGP

For R-2 : Mr.L.P.Shanmugasundaram, SPL GP [Co-op]

ORDER

The Petitioner has filed this writ petition to set aside the order of Attachment before Judgment passed with respect to his landed property on the ground that the property has been purchased from the income from his Son-in-law, the 3rd respondent

herein, who is employed as Assistant Clerk/Fertilizer salesman in the 2nd respondent Credit Society, against whom and other officers of the Society, an enquiry under Section 81 of the Tamil Nadu Co-operative Society Act, 1983 has been initiated. His Son-in-law/the 3rd respondent herein has got no connection with respect to that property. Only an enquiry has been ordered against the officers of the Credit Society and no surcharge proceedings have been initiated. It is not open for the Deputy Registrar of Co-operative Societies, the 1st respondent herein to presume that the property stands in the names of the relatives of the petitioner are benami properties of the petitioner under Section 32(2) (d) of the Tamil Nadu Co-Operative Societies Act, 1983 and Rule 48 of the Tamil Nadu Co-Operative Societies Rules, 1988.

2.The learned Additional Government Pleader would submit that if the petitioner is aggrieved by the said order, he has to file an appeal against the said order before the Tribunal. Therefore, the writ petition is not maintainable before this Court.

3.Heard Mr.S.Balasubramanian, learned counsel appearing for the petitioner and Mr.V.Selvaraj, learned Additional Government Pleader takes notice on behalf of the first respondent and Mr.L.P.Shanmugasundaram, learned Special Government Pleader [Co-op] takes notice for the second respondent, and perused the materials available on record.

4.In an identical issue, this Court in W.P.Nos.38843 & 38844/2015 dated 10.12.2015 in paragraph 4 and 6 has held as follows:

"4.In fact, an identical issue was considered by this Court in E.MURUGAN AND ORS .v.THE REGISTRAR OF CO-OPERATIVE SOCIETIES AND ORS [W.P.Nos.11143 to 11146 of 2015 dt.17.04.2015], wherein this Court accepted the contentions raised by petitioners therein and set aside the impugned proceedings. The operative portion of the order reads as follows:

"9.It is relevant to extract 167 as well as rule 140 of the Co-Operative Societies Act.

167.Furnishing of Security and attachment of property:-

(1)Where the Registrar is satisfied on the application of a registered society in respect of a reference made to him under sub-Section (1) of Section 90 or on the the application of a liquidator appointed under Section 138 in respect of the proceedings of such liquidator for

determining the contribution to be made by a person to the assets of the society under clause (b) of sub-section (2) of Section 139 or on the application of the board or liquidator or any creditor to the society or otherwise in respect of any inquiry ordered into the conduct of any person under Section 87 that any party to the reference or the person as the case may be, is about to dispose of or remove from the local limits of the jurisdiction of the Registrar, the whole or any part of his property with intent to defeat or delay the execution of any decision that may be passed on the reference or of any order that may be passed against him by the liquidator or the Registrar, as the case may be, the Registrar may, by order, direct the party or the person to furnish security in such sum and within such time as may be specified in such order and to produce and place at the disposal of the Registrar when required, the said property or such part thereof as may be sufficient for the execution of any decision or order aforesaid.

(2) The Registrar may also in the order made under Section (1), or by a separate order, direct the conditional attachment of the said property, or such part thereof and such attachment shall have the same effect as if it had been made by a competent Civil Court:

Provided that no order for conditional attachment shall be made under this sub-section unless the Registrar, for the reasons to be recorded in writing, is satisfied that the whole or any part of the property will be disposed of or removed with intent to defeat or delay the execution of any decision or order of the liquidator or the Registrar, as the case may be.

"rule 140. Mode of making attachment before judgment:

(1) Attachment of property under Section 167 shall be made in the manner provided in the foregoing rules of this chapter.

(2)Where a claim is preferred to property attached under sub-rule (1) such claim shall be investigated in the manner and by the authority specified in the foregoing rules of this chapter.

(3)Where a direction is made for the attachment of any property under sub-rule (1),the Registrar shall order the attachment to be withdrawn:-

(a)When the party concerned furnished the security required together with the security for the cost of the attachment; or

(b)when the Registrar makes an order under Sub-Section 167 that the party concerned need not repay or restore any money or property or contribute any sum to the assets of the society by way of compensation; or

(c)When the dispute referred to in sub-Section (1) of Section 90 has been decided against the party at whose instance the attachment was made; or

(d)When the liquidator determines under clause (b) of sub-Section (2) of section 139 that no contribution need be made by the party concerned.

(4)Attachment made under sub-rule(1) shall not affect the rights existing prior to the attachment of persons not parties to the proceedings in connection with which the attachment was made, not bar any person holding a decree against the person whose property is attached from applying for the sale of property under attachment in execution of such decree.

(5)Where property is under attachment by virtue of the provisions of this rule and a decree is subsequently passed against the person whose property is attached, it shall not be necessary upon an application for execution of such decree to apply for re-attachment of the property.

10. A perusal of the impugned order would disclose that in terms of Section 167(1), no order has been passed calling upon the petitioners to furnish security in such sum and within such time as may be specified in such

order and to produce and place at the disposal of the Registrar when required, the said property or such part thereof as may be sufficient or the execution of any decision or order aforesaid. Admittedly, the impugned order is dated 09.04.2015 and the petitioners were called upon to furnish security for the said sum on the very same date. According to the petitioners the notices were served on them by force on the very same date.

11. In the light of the said infirmity, it is not necessary for the writ petitioners to invoke the alternative remedy available as pointed by the learned counsel appearing for the respondents 1 to 5.

12. In the result, all the writ petitions are partly allowed and the impugned order dated 09.04.2015 is set aside and the matter is remitted back to the third respondent for fresh adjudication in accordance with Section 167 of the Tamil Nadu Co-Operative Societies Act r/w. Rule 140 of the Tamil Nadu Co-Operative Societies Rules. It is made clear that in the interregnum, the petitioners shall not alienate or encumber or create third party rights in respect of the immovable properties. The third respondent shall make every endeavour to pass fresh orders in terms of the above said provisions within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed."

It cannot be disputed by the respondents that the legal issue involved in these writ petitions is squarely covered by the order passed by this Court in W.P.Nos.11143 to 11146 of 2015, referred to above.

6. Accordingly, these writ petitions are partly allowed, the impugned orders dated 04.12.2015 & 02.12.2015 are set aside and the matter is remitted back to the second respondent for fresh adjudication in accordance with Section 167 of the Tamil Nadu Co-Operative Societies Act r/w. Rule 140 of the Tamil Nadu Co-Operative Societies rules. It is made clear that in the interregnum, the petitioners shall not alienate or encumber or create third party rights in respect of the immovable properties.

The second respondent shall make every endeavour to pass fresh orders in terms of the above said provisions, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

5. In the light of the order passed in W.P.Nos.38843 & 38844/2015 dated 10.12.2015 (cited supra), I am inclined to pass the following order.

(i) The writ petition is partly allowed.

(ii) The impugned order of the first respondent in proceedings No.CEP.01/2016-27/Sa.Pa is set aside and the same is remitted back to the first respondent for fresh adjudication in accordance with Section 167 of the Tamil Nadu Co-Operative Societies Act r/w. Rule 140 of the Tamil Nadu Co-Operative Societies rules.

(iii) It is made clear that in the interregnum period, the petitioner shall not alienate or encumber or create third party rights in respect of the subject property.

(iv) The first respondent shall make every endeavour to pass fresh orders in terms of the above said provisions, within a period of twelve weeks from the date of receipt of a copy of this order.

(v) No costs.

(vi) Consequently, the connected miscellaneous petition is closed.

Sd/-

Deputy Registrar

/true copy/

Sub Asst. Registrar

KP

To

1. The Deputy Registrar of Co-operative Societies,
Thiruchankodu Circle,
Thiruchankodu.

2. President,
S 1067 Jamein ellampalli,
Primary Agricultural Co-operative Credit Society Ltd.,
Jamein elampalli,
Paramathi Velur Taluk, Namakkal District.

+1cc M/s.S.Balasubramanian, Advocate in sr.no.22149
+1cc to Government Pleader in sr.no.22841
+1cc to M/s.L.P.Shanmugasundaram, Advocate in sr.no.23112

W.P.No.43699/2016

PPA (CO)
NR 28/06/2017



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