



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.[MD].No.2106 of 2017
and
W.M.P. (MD) Nos.1755 and 1756 of 2017

M.Malarvizhi : Petitioner

Vs.

1.The Chief Manager/Authorized Officer,
Bank of India,
Plot No.3, Vaigai Colony,
Anna Nagar,
Madurai-625 020.

2.V.Pethi Maharajan,
3.P.Jeyasudha
4.D.Anbunathan

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his proceedings dated 19.01.2017 and quash the same and consequently, forbear the first respondent herein from proceeding against the property in Old S.No.43/2 and New Survey No.61/2 to an extent of 3 cents in Usilampatti, Karuvanoor Village, Madurai District.

For Petitioner : Mr.K.Hemakarthiskeyan
For Respondent No.1 : Mr.S.Rengasamy

O R D E R

[Order of the Court was made by R.SUBBIAH, J.]

The present Writ Petition has been filed seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his proceedings dated 19.01.2017 and quash the same and consequently, forbear the first respondent herein from proceeding against the property in Old S.No.43/2 and New Survey No.61/2 to an extent of 3 cents in Usilampatti, Karuvanoor Village, Madurai District.



2. The case of the petitioner is that the second and third respondents availed a loan from the first respondent bank for a sum of Rs.10,00,000/- and the fourth respondent, as the guarantor, had executed the property situated in Old S.No.43/2 and New Survey No.61/2 to an extent of 3 cents in Usilampatti, Karuvanoor Village, Madurai District, as guarantee for the said loan without the knowledge of the petitioner. The petitioner is the co-owner in respect of the property mortgaged by the fourth respondent. Without initiating any action against the principal borrowers, now the bank is proceeding with the property mortgaged by the fourth respondent. Furthermore, in respect of the said property, a civil suit in O.S.No.243 of 2016 is pending on the file of the District Munsif Court, Melur and in the suit schedule mentioned property, the fourth respondent is having only one share and hence, the bank cannot proceed against the property in question. Therefore, seeking to quash the possession notice issued by the first respondent dated 19.01.2017, the present Writ Petition has been filed by the petitioner.

3. Having regard to the facts and circumstances as enumerated therein, we are of the view that it is not within the province of this Court, while exercising jurisdiction under Article 226 of the Constitution of India, to conduct trial and decide the title over the property. However, the petitioner is having an alternative remedy before the Debts Recovery Tribunal. Therefore, the Writ Petition is dismissed, by giving liberty to the petitioner to approach the Debts Recovery Tribunal and the petitioner can very well canvass all the points including the grounds raised herein, before the Tribunal. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub-Assistant Registrar

To
The Chief Manager/Authorized Officer,
Bank of India,
Plot No.3, Vaigai Colony,
Anna Nagar, Madurai-625 020.

+One cc to M/s.Hema Karthikeyan, Advocate, SR.No.7256

+2 ccs to Mr.S.Rengasamy, Advocate, SR.No.7275

SML

RL/5C/2P/SV/MMS/21.2.2017

Order made in
W.P.[MD].No.2106 of 2017
08.02.2017