

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 12.11.2019

Pronounced On : 22.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.4388 of 2011

R.Ramanathan

.. Petitioner

Vs

1. The Government of Tamilnadu
Rep. By its Secretary Home
(Courts II A) Department,
Fort St.George,
Chennai - 600 009.

2. The Competent Authority and
Additional Commissioner of Land Administration,
Chepauk, Chennai - 600 005.

3. Navajothi Investments,
Rep. By Respondent No.4 and
situate at Sullivan Garden Road,
Opp. To Union Bank of India,
Mylapore.

4. Chockalingam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 15.09.2009 made in OA No.12 of 2006, on the file of Special Court, under TNPID Act, 1887, Chennai.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.N.Manikandan (for R1 & R2)
R3 & R4 given up

ORDER

The applicant in OA No.12 of 2006, on the file of the learned Special Judge under Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 [hereinafter referred as 'TNPID Act'] at Chennai, is the petitioner herein.

2. Before the Special Court, the revision petitioner has filed an application under Section 7(3) of the TNPID Act, seeking the relief to raise the interim order of attachment dated 29.03.2003 under G.O.Ms.No.932 Home (Courts II-A) Department, effected by the Government of Tamil Nadu, pertaining to the property being the land and building in Flat No.D6, First Floor Ayodhya Flats, situated at 3/5 South Bank Road, Mandavelipakkam, Chennai-28, comprised in Survey No.4311 (part) situated in Mylapore Village, Mylapore-Triplicane Taluk, Chennai District, measuring about 600 sq.ft.

3. The learned Special Judge, after affording an opportunity to the respondents for raising their objections, by order dated 15.09.2009,

dismissed the application filed by the revision petitioner as not maintainable, with liberty to file a fresh petition after impleading all the legal representatives of the deceased Thiyagarajan.

4. Aggrieved over the said finding, the petitioner is before this Court, with the present Civil Revision Petition.

5. The averments set out in the affidavit filed by the revision petitioner in support of the application viz., OA No.12 of 2006, before the Special Court, is as follows:

(i) The petition mentioned property was purchased by one S.Thiyagarajan, son of Sockalinga Chettiar, vide sale deed dated 19.08.1991 and registered as Document No.1437 of 1991, in the office of the Sub Registrar, Mylapore, Chennai. Subsequent to the purchase, the said S.Thiyagarajan, obtained a loan of Rs.1,20,000/- from Alwarpet Benefit Fund, Chennai-18 and executed a Mortgage Deed on 03.05.1993, registered as Document No.893 of 1993, in the office of the Sub Registrar, Mylapore, Chennai.

(ii) During the subsistence of the above mortgage the said Thiagarajan approached the revision petitioner and sought for a loan of a sum of Rs.4,50,000/-, for clearing the mortgage loan with Alwarpet Benefit Fund and for his business and accordingly, the revision petitioner has given a cheque in favour of the Alwarpet Benefit Fund, for a sum of Rs.80,000/- and also given another cheque of Rs.3,70,000/- in favour of S.Thiagarajan. For the loan availed, the above said S.Thiagarajan, created a mortgage in favour of the revision petitioner, for the above said amount i.e Rs.4,50,000/- and registered the same as Document No.2531 of 1998 in the office of the Sub Registrar, Mylapore, Chennai - 4.

(iii) The above said S.Thiagarajan, is none other than the accused, against whom a criminal case was registered by the Economic Offence Wing in C.C.No.76 of 2004, for non payment of deposits made by the depositors in the company run by him, under the name and style of 'Navajothi Investments'. After collecting deposits from various depositors, the above said S.Thiagarajan and his wife committed suicide because of huge debts. Thereafter, the son and daughter of the above said deceased S.Thiagarajan, handed over the possession of the petition mentioned property, to the revision petitioner and after that the revision petitioner is

maintaining the property and also paying property tax and other public outgoings.

(iv) While the situations are being so, the Government of Tamil Nadu attached the above said property under G.O.Ms.No.932 Home (Courts II-A) Department, dated 23.09.2003, for the default committed by the deceased S.Thiyagarajan, in the company run by him.

(v) The petition mentioned property was purchased as early as in the year 1991 by the deceased S. Thiyagarajan, out of his own income and he is liable to pay a sum of Rs.9,09,751/- to the revision petitioner as mortgagee. Since, the revision petitioner being the first charge holder, he is legally entitled to bring the property for public auction and to realise the sale proceeds, due to him. Accordingly, the interim order of attachment made by the Government of Tamil Nadu, vide G.O.Ms.No.932 Home (Courts II-A) Department, dated 23.09.2003, is not sustainable in law and it has to be raised.

6. The gist of the averments found in the counter affidavit filed by the 2nd respondent, which has been adopted by the 1st respondent, in OA

No.12 of 2006, is as follows:

(i) The deceased S.Thiyagarajan has purchased the property in 1991 only from the funds collected from various depositors. As the petition mentioned property is in the possession of the Tahsildar, Mylapore, Triplicane Taluk, Chennai-28, the contention of the revision petitioner that the possession of the petition mentioned property, was handed over to him by the daughter and son of the deceased S.Thiyagarajan, is denied.

(ii) Even though the petition mentioned property was purchased in the year 1991, the Government can attach the property on the ground of insufficient funds for repaying the depositors. Amount of Rs.9,09,751/- alleged to be payable to the revision petitioner by the deceased S.Thiyagarajan, is totally wrong. The accused and his sons joined with malafide intention and colluded with each other and only to cheat the public, have further created some false transaction, in order to eye wash the Government and hence the revision petitioner, is not the first charge holder and the application has to be dismissed.

7. Before the Special Court, after receiving the counter affidavit filed by the respondents, the revision petitioner has examined himself as

PW1 and marked Exs. A1 to A7. One Mr.N.Subbiyan, the Competent Authority and the District Revenue Officer, Chennai, has been examined as RW1 and Ex.B1 was marked, on the side of the respondents.

8. Having considered all the materials placed before him, the learned Special Judge had dismissed the application filed by the revision petitioner, with liberty as stated above.

9. Today, when the Civil Revision Petition came up for hearing, both the learned counsel appearing for the revision petitioner as well as the respondents appeared and made their respective submissions.

10. The learned counsel appearing for the revision petitioner would contend that according to Ex.A1, the deceased S.Thiyagarajan purchased the property in dispute on 19.08.1991 and thereafter, he mortgaged the said property with Alwarpet Benefit Fund on 03.05.1993. Subsequently, in order to settle the dues payable to Alwarpet Benefit Fund and for his business, the deceased S.Thiyagarajan obtained loan from the revision petitioner and executed a simple mortgage deed on 17.12.1998. Only after executing those mortgage deeds, the Government had passed the order of

attachment, vide G.O.Ms.No.932 Home (Courts II-A) Department, dated 23.09.2003, which is subsequent to the date of mortgage.

11. Learned counsel for the revision petitioner would further contend that the total loan payable by the deceased to the revision petitioner is Rs.9,09,751/- and also the revision petitioner, is the first charge holder on the above property as and from 17.12.1998. Moreover, as of now, the property is in the possession of the revision petitioner. Hence, being the first charge holder, the revision petitioner is only the sole person to auction the petition mentioned premises, for which interim order of attachment made by the Government vide G.O.Ms.No.932 Home (Courts II-A) Department, dated 23.09.2003, has to be necessarily raised.

12. Learned counsel appearing for the revision petitioner further contended that the Court below without considering the fact that the revision petitioner is the sole person to auction the property, decided the application filed by the revision petitioner, in favour of the respondents, which is against the principles of law.

13. On the other hand, the learned Government Advocate, appearing for the respondents 1 and 2 argued that the deceased S.Thiyagrajan, purchased the petition mentioned property only from the funds accumulated by way of collecting the deposits from various persons. According to the calculation arrived in the criminal prosecution, the deceased S.Thiyagarajan is liable to pay Rs.82 Lakhs to various depositors. He would further contend that as of now, after passing an order of interim attachment, the property is in the possession of Tahsildar, Mylapore, Triplicane Taluk, Chennai-28. Further, learned Government Advocate submitted that the property is under the lock and seal and hence, it cannot be said that the mortgage created in favour of the revision petitioner is valid and enforceable one.

14. Now on going through the impugned order passed, the learned Special Judge has held that for deciding the application filed by the revision petitioner the son and daughter of the deceased S.Thiyagarajan, are necessary parties. But they have not been arrayed as a party to the application and on that score alone, the application filed by the revision petitioner, fails. Further, it was held that the remedy available to the revision petitioner is to challenge the final attachment order.

15. Upon considering the arguments advanced by either side it appears that application has been filed under Section 7(3) of the TNPID Act, which reads as follows:

“Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Special Court at any time before an order is passed under sub-Section (4) or sub-Section (6).”

So according to the said section, it is necessary on the part of the Special Court to serve a notice to the person who is having the interest over the property under attachment.

16. On going through the pleadings set out in the affidavit, as well as in the counter affidavit, it has not been stated that before making an order of interim attachment, whether, a notice was served to the revision petitioner. Therefore, the revision petitioner is entitled to raise an objection before the Special Court at any time before passing an order, making the ad interim order of attachment, absolute.

17. However, in this regard, the learned counsel appearing for the revision petitioner would contend that during the pendency of this proceedings, interim order of attachment, was made absolute.

18. In this connection, though the interim order of attachment is made absolute, since the same was done during the pendency of this proceedings, it cannot be said that the attachment order passed is against the rights accrued by the revision petitioner.

19. On the close scrutiny of the impugned order passed by the Court below, as stated supra, in the impugned order liberty has been given to the revision petitioner to file a fresh application, after impleading all the legal representatives of the deceased S.Thiyagarajan.

20. In this regard, at the time of giving evidence as PW1, the revision petitioner has stated that after executing the mortgage, the mortgagors viz. S.Thiyagarajan and wife Lakshmi, committed suicide, after leaving behind one son and daughter as their legal heirs. So it is apparent that after the death of the purchaser, the right of the property is vested with the legal heirs of the deceased purchaser. So only the legal heirs of the deceased

S.Thiyagarajan, are having the right to agitate the action taken either by the Government or by any individual in respect of the property purchased by their father. Further, in his evidence, the revision petitioner himself has admitted that the title holder of the property S.Thiyagarajan, is no more and only his legal heirs are necessary parties to decide this type of application.

21. More than that, in his evidence during cross examination, the revision petitioner has also stated that as of now the property in dispute was under lock and seal. Accordingly, the evidence given by the PW1 would go to show that he has filed the application without impleading the necessary parties. Furthermore, he has filed a false affidavit stating that the property is in his possession. Therefore, for deciding the application filed by the revision petitioner, the son and daughter of the deceased S.Thiyagarajan, are necessary parties. Only on that aspect, liberty was given to the revision petitioner by the Court below, to file a fresh application after impleading all the legal heirs of the deceased S.Thiyagarajan. Therefore, this Court do not find any irregularity in the order impugned.

22. In the light of the above discussion, the Civil Revision Petition is dismissed, with the same liberty, given by the Court below. It is open to the revision petitioner, to file a fresh application, after impleading all the legal representatives of the deceased S.Thiyagarajan, within a period of one month from the date of receipt of a copy of this order. No Costs.

22.11.2019

Speaking/Non-speaking order
Index: Yes/No
Internet: Yes
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To

1. The Special Court, under TNPID Act, 1997,
Chennai.

2. The Government of Tamilnadu
Rep. By its Secretary Home
(Courts II A) Department,
Fort St.George,
Chennai - 600 009.

3. The Competent Authority and
Additional Commissioner of Land Administration,
Chepauk, Chennai - 600 005.

R.PONGIAPPAN, J.,

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Pre-delivery Order in
CRP (NPD) No.4388 of 2011

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