

In the High Court of Judicature at Madras

Dated : 08.4.2019

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.1171 of 2019 & CMP.Nos.8224 & 8226 of 2019

E.Kalaivani

... Appellant/Petitioner

Vs

1.The Deputy Registrar, the Cooperative Society, Office of the Assistant Registrar, Sudhakaran Complex, Vellore Road, Tiruchengode, Namakkal District-636211.

2.The Cooperative Sub-Registrar/ Inspection and Sale Officer, Tiruchengode Circle Cooperative, Deputy Registrar Office, CHB Colony, Velur Road, Tiruchengode-637210. Namakkal District.

...Respondents/Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 25.3.2019 made in WP.No.8361 of 2019.

Prayer in W.P.No.8361 of 2019:Writ Petition is filed under Article 226 of the Constitution of India seeking for issuance or Writ of Certiorari to call for the records relating to the proceedings of the 2nd respondent in auction sale notice dated 22.02.2019 in pursuant to the auction sale notice survey No.333/2 and 333/3 of measuring extend of 3810 sq.ft.

For Appellant : Mr.G.Murugendiran

For Respondents : Mr.K.Vasanthanayagam for
Mr.R.Bala Ramesh, SGP (Co.op.)

Judgment was delivered by T.S.SIVAGNANAM, J

We have heard Mr.G.Murugendiran, learned counsel for the appellant and Mr.Vasanthanayagam, learned counsel appearing on behalf of Mr.R.Bala Ramesh, learned Special Government Pleader for the respondents.

2. This appeal is directed against the order dated 25.3.2019 passed by the learned Single Judge in WP.No.8361 of 2019.

3. The said writ petition was filed by the appellant challenging the auction sale notice dated 27.3.2019 in so far as it brings for auction the property of the appellant comprised in S.F.Nos.333/2 and 333/3 punjai acres, in total, to an extent of 3,810 sq.ft., Ward No.23, Kokkarayanpet Road, Tiruchengode Municipality.

4. The grievance of the appellant is that the said property is her individual property having purchased the same by a registered sale deed dated 11.9.2006 vide doc.No.4404 of 2006 on the file of the Sub-Registrar, Tiruchengode.

5. The appellant's husband was working as a Secretary in S.1067 Zamin Elampalli Primary Agricultural Cooperative Credit Society and action was initiated against the appellant's husband under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 and two others for recovery of a sum of more than Rs.1 Crore. These proceedings make the appellant's husband to be jointly and severally liable to pay the amount along with the other two employees. On 25.7.2016, the property, which is now being claimed as the property of the appellant, was attached and a notice was issued to the appellant's husband. However, he did not raise any objection. It is stated that it is the individual property of the appellant. Apart from that, there were several other properties, which were attached. Immediately, Form No.9 auction sale notice dated 13.2.2019 was issued fixing the date of auction as 27.3.2019. At that juncture, the appellant approached this Court and filed the said writ petition challenging the said auction sale notice.

6. In our considered view, the learned Single Judge rightly directed the appellant to approach the Sale Officer and file a petition under Rule 135(2) of the Tamil Nadu Cooperative Societies Rules, 1985 by making a claim or objection by holding that that without doing so, the appellant could not have approached the Writ Court. Ultimately, the said writ petition was dismissed.

7. The learned counsel for the appellant has vehemently contended that the personal property of the appellant should not

be proceeded against, that the property in question was purchased from her own funds in the year 2006 and that for recovery of the money from her husband, the individual property of the appellant cannot be either attached or sold.

8. Unfortunately, we cannot adjudicate into the question of title and the questions as to whether the appellant funded the purchase of the property in question or as to whether the funds of the appellant's husband were utilized to purchase the same. These are issues, which should be established by the appellant before the second respondent by filing appropriate petition/objection under Rule 135 of the said Rules. Thus, in our considered view, the learned Single Judge was fully justified in dismissing the said writ petition.

9. The learned counsel appearing on behalf of the respondents has placed for our consideration a typed set of papers containing relevant documents, from which, we are able to ascertain that the appellant took no steps earlier i.e from the year 2016 and that only when auction was proposed to be held on 27.3.2019, the appellant approached the Writ Court. For the above reason, we find that there is absolutely no merit in the writ appeal.

10. The learned counsel appearing on behalf of the respondents submits that the auction, which was scheduled to be held on 27.3.2019, has been postponed and proceedings dated 27.3.2019 to that effect had been issued by the second respondent.

11. In the light of the above, it is but appropriate for the appellant to approach the second respondent by filing petition/objection under Rule 135 of the said Rules.

12. Accordingly, the above writ appeal is dismissed with a direction to the appellant to file petition/objection under Rule 135 of the said Rules within two weeks from the date of receipt of a copy of this judgment. On receipt of the petition/objection, the second respondent shall consider the same, peruse the documents and pass a speaking order on merits and in accordance with law. Till such orders are passed, the property in question shall not be brought for auction. However, the order of attachment shall continue. This order will not cover the other properties, which have been attached and which appear to stand in the name of the appellant's husband -

M.Elango, Secretary of the said cooperative society, who is presently under suspension. No costs. Consequently, the connected CMPs are dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Registrar, the Cooperative Society, O/o Assistant Registrar,
Sudhakaran Complex, Vellore Road, Tiruchengode, Namakkal District-
636211.

2.The Cooperative Sub-Registrar/Inspection and Sale Officer,
Tiruchengode
Circle Cooperative, Deputy Registrar Office, CHB Colony,
Velur Road,
Tiruchengode-637210. Namakkal District.

+1cc to M/S.G.Murugendran, Advocate Sr.33891
+1cc to Mr.R.Balaramesh, Advocate Sr.33794

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srg 31/05/2019

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