

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
&
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.41429 and 41430 of 2016
W.M.P.Nos.35402 and 35404 of 2016

Mrs. S.Renuga .. Petitioner in WP.No.41429 of 2016
Mr.C.Ramaiyan .. Petitioner in W.P.No.41430 of 2016

-vs-

1. Debt Recovery Tribunal-I,
represented by the Recovery Officer,
6th Floor, Spencer Towers,
770-A, Anna Salai,
Chennai 600 002.

2. Indian Bank,
represented by its Branch Manager
Adhithanar Salai Branch,
Chennai 600 002.

3. P.K. Peer Mohammad
4. S.Sayed
5. K. Suresh
6.N.Chandran
7.R.Vijakumar
8.N.R.Manikandan

.. Respondents
in both writ Petitions

Prayer in both WPs: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of certiorarified Mandamus calling for the records relating to the order dated 22.4.2016 made in C.P.No.6 of 2014 in DRC No.97/1998 passed by the 1st respondent and quash the same and consequentially forbear the respondents, their men and subordinate in any manner disturbing the peaceful possession and enjoyment of the property more particularly described in the petition schedule .

For Petitioner
in both Wps : Mr.G.Ethirajulu

For Respondents: Mr.S.Arulselvam for R2
Mrs.S.Anuradha Balaji for R3 to R5
Mr.K.Chandrasekaran for
P.Solomon Francis for R8

COMMON ORDER

(Order of the Court was made by M.GOVINDARAJ, J.)

The above Writ Petitions challenge the order passed by the Recovery Officer, Debts Recovery Tribunal-I, Chennai in Claim Petition No.6 of 2014 in DRC.No.97/08 dated 22.4.2016

2. The writ petitioners are the purchasers of the property comprised in S.No.500/2 to an extent of 1.16 acres at No.91, Thirumudivakkam Village, Sri Perumpudur taluk, Kancheepuram District.

3. Originally the property was owned by one Nagan and his family members. There was a partition and one of the coparceners namely Chandran was allotted 2.48 acres of land comprised in S.No.500. The said Chandran had mortgaged the land measuring to an extent of 1.32 acres out of 2.48 acres with definite boundaries vide document No.1806/1981 dated 30.3.1981 in favour of one Balammal. Thereafter on 19.3.1983, he sold the mortgaged property by virtue of a Registered document No.2121/1983. Thereafter the said Chandran mortgaged the remaining extent of 1.16 acres in S.No.500 by way of an equitable mortgage in favour of Indian Bank on 9.4.1991. Since the said Chandran failed to make repayments, Indian Bank filed a suit before the High Court in C.S. No.1102 of 1994.

4. Pursuant to the formation of Debts Recovery Tribunal, the suit was transferred from High Court to the Tribunal and was renumbered as TA.No.315 of 1997. The property involved in the present dispute was described with different boundaries and different survey number. In the suit the property was stated as comprised in S.No.500, whereas, in the schedule before the Debts Recovery Tribunal, it has shown to be one comprised in S.No.500/1. The western side boundary was shown as Balammal's property. The Application was decreed in favour of Indian Bank. The Recovery Certificate was also issued in favour of the Indian Bank on 18.6.1998, wherein item II of schedule A of the property was described as land in S.No.500/1, measuring an extent of 1.16 acres. On 25.11.1998 an order of attachment was issued against the land in S.No.500/1 with the same

boundaries.

5. It is relevant to note that on 30.6.1999 the purchaser of land on the western side measuring an extent of 1.32 acres in Survey No.500 namely Balammal executed a WILL in favour of her son Veeraraghavulu and registered the same as document No.17/1999. The said Veeraraghavulu appointed one UdayaKumar as his Power of Attorney. The said Power of Attorney sold the land measuring an extent of 1.41 acres to the 8th respondent herein under a sale deed dated 31.5.2006, wherein, the survey number is shown as 500/1, Thirumudivakkam Village. Everesince the said date of purchase, the 8th respondent was in possession and enjoyment of the property. Curiously the Recovery Certificate was issued for Survey No.500/1, but measuring an extent of 1.16 acres and not to 1.32 acres purchased by Balammal.

6. Thereafter the 6th respondent through his Power of Attorney, sold an extent of 1.16 acres to the 7th respondent on 5.10.2005 under registered document, who, in turn, after effecting sub division, sold an extent of 0.58 acres out of 1.16 acres, in S.No.500/2 to the petitioner in WP.No.41424 of 2016 and on the same day he sold the remaining portion to petitioner in W.P.No.41430 of 2016, an extent of 0.58 acres comprised in S.No.500/2 under registered sale deed. Thereafter the petitioners effected sub division as 500/2A and 2B and also obtained separate patta adangal in their names.

7. While so, the property was brought to auction and in the auction, the respondents 3 to 5 have purchased the property. When the 8th respondent has got knowledge about the auction and sale of his property, he approached the Debt Recovery Tribunal by filing a petition in Appeal SR.No.5134 of 2013 in DRC.No.97 of 1998 to set aside the entry Survey No.500/1 from the Sale Certificate dated 19.2.2008 executed on 18.8.2008 as Document No.3177 of 2008 on the file of SRO, Padappai and to incorporate correct survey number. The Recovery Officer has returned the said petition on the ground that the petition is not maintainable as it was not filed within 30 days from the date of sale.

8. Aggrieved against the same, the 8th respondent moved a Writ Petition in W.P.No.27464 of 2013 before this Court, wherein, this Court, vide its order dated 21.3.2014 directed the Recovery Officer to entertain the petition and decide the matter in accordance with merits after hearing the parties concerned, followed by which, the said petition CP.No.6 of 2014 in DRC.No.97 of 1998 was taken on file. On application, an Advocate Commissioner was appointed to inspect the property. The Advocate Commissioner report in his report had found discrepancies in the description of boundaries and identity of

the property sold in auction. After hearing all the parties, the Recovery Officer, vide his order dated 22.4.2016 passed the impugned order which is extracted hereunder;

The Recovery Officer, after elaborately going through the documents has come to the conclusion as follows;

'(a) The petitioner's property was not subject to the recovery proceedings in DRC.No.97/1998 before this Tribunal.

(b) The property that was purchased by the respondents 2 to 4 from this Tribunal is different from that of the petitioner's property as could be identified by their respective boundaries;

(c) The Survey Number in the sale certificate' dated 19.2.2008 issued by this Tribunal in favour of the auction purchasers (Respondents 2 to 4) shall be read as "Survey No.500"instead of "Survey No.500/1".

9. Thereafter, the auction purchasers have attempted to take possession of the writ petitioners property lying at Survey No.500/2A and 500/2B. Their attempt to take over possession of the property was objected by writ petitioners. After gaining knowledge about the impugned order, the writ petitioners have approached this Court by way of filing these Writ Petitions

10. We have heard the submissions of Mr.G.Ethirajulu, learned counsel for petitioners, Mr.S.Arul Selvan, appearing for 2nd respondent, Mrs.S.Anuradha Balaji, appearing for respondents 3 to 5 and Mr.K.Chandrasekaran appearing on behalf of Mr.P.Solomon Francis for 8th respondent.

11. The flow chart given below will explain the transaction that took place between the parties to the writ petitions;

FLOW OF TITLE PERTAINING TO S.NO.500/1 (1.32 ACRES) OF
THIRUMUDIVAKKAM VILLAGE

02.10.1957 ---> Sale Deed in favour of Nagan by
Venkatasubramaniam and others
(Document No.2515/1957)



12.02.1968 ---> Partition amongst Nagan and his son's
2.48 Acres in s.No.500 allotted to
Chandran (Doc.No.410/68)



30.03.1981 ---> Chandran mortgages 1.32 Acres in favour of Ballammal (Document No. 1806/1981)



19.03.1983 ---> Chandran sells 1.32 Acres to Ballammal (Document No. 2121/1983)



1986 ---> Sub Division of S.No.500/1 & 500/2
30.06.1999 ---> Ballammal executed the will in favour of his son Veeraragavalu to an extent of 1.32 Acres (Document No.17/1999)



31.08.2005 ---> Veeraragavalu appoints Udayakumar as his power agent (Doc.No.1018/2005)



31.05.2006 ---> Veeraragavalu through his power agent Udayakumar sells the property to N.R. Manigantan (Doc.No.2897/2006)



30.05.2016 ---> Mortgage by N.R.Manigantan in favour of IL&FS

FLOW OF TITLE PERTAINING TO S.NO.500/2 (1.16 ACRES) OF THIRUMUAKKAM VILLAGE

11.04.1991 ---> Deposit of Title Deed by Chandran (6th Respondent) in favour of 2nd respondent



05.04.1994 ---> Plaint filed by 2nd respondent against Chandran (6th respondent)



08.09.1997 ---> Order in T.A.No.315 of 1997 (C.S.1102 of 1994)



18.06.1998 ---> Recovery Certificate issued by DRT Chennai.



25.11.1998 ---> Order of attachment granted by DRT Chennai



05.10.2005 ---> Sale Deed executed by 6th respondent's
(Chandran) in favour of 7th respondent
(Vijayakumar)



18.04.2006 ---> Sale Deed executed by 7th Respondent in
favour of Renuga (Petitioner in
WP.No.41429 of 2016)



18.04.2006 ---> Sale Deed executed by 7th respondent in
favour of C.Ramaiyan
(Petitioner in W.P.No.41430 of 2016)

12. From the Flow Chart No.I, it is very clear that Survey No.500/1 in respect of the property measuring an extent of 1.32 Acres devolved on 8th respondent as rightly found by the Recovery Officer. So there is no dispute about his property.

13. Now it has to be seen as to whether the property to which the Recovery Certificate was issued was correctly identified.

14. Admittedly, the equitable mortgage was executed by the guarantor to the decree holder Bank in respect of land measuring 1.16 acres in Survey No.500, wherein the property was mentioned as follows;

'wet land 23 cents, Nanjai, 23 cents Najai,
No.620/1A, 620/1B, 1 Acre 16 cents in S.No.500, 91,
Thirumudivakkam Village, Tambaram, Sub-District,
Chengalpattu District.'

But in the Recovery Certificate issued by the Bank, the schedule is mentioned as follows;

'Land comprised in S.No.500/1 measuring an
extent of 1.16 cents situated at No.91,
Thirumudivakkam Village, Tambaram Sub District,
Chengalpattu District bounded on the

'North by : Krishnan's Land
South by: Karuppan's Land
West by : Balamal's land
East by : Canal'

15. The respondents 2 to 5 being auction purchasers have purchased the same without verifying the identity and title. The schedule of the property as described in the application before the Debts Recovery Tribunal shows that Balammal's land has western boundary. It means that even before mortgage, the property measuring an extent of 1.32 acres was sold to Balammal. The said property on inspection and measurement of the Advocate

Commissioner fall under Survey No.500/1. If that be so, the property which was sold by the decree holder was a wrong property or one without any identity or with wrong boundaries and without any clear identity.

16. The attachment order issued by the Recovery Officer dated 25.11.1998 was also with respect to the different property. In effect, the decree holder had wrongly proceeded and sold the property which is not mortgaged to the decree holder.

17. Therefore the decree by itself has become illegal and inexecutable and thereby the very foundation that the issuance of the Recovery certificate itself is erroneous and unacceptable. In the meanwhile, it appears that on 5.10.2005, the guarantor-6th respondent who had mortgaged his property suppressing the mortgage had sold the same to the 7th respondent, who in turn sold the same to the writ petitioners in the year 2006. In that event, the attachment ordered by the Recovery Officer for the property comprised in S.No.500/1 did not affect the property in S.No.500/2. In other words, the purchase of the property in S.No.500/2 suffer no attachment and is not bound by Lis pendence.

18. The encumbrance certificate produced by the 8th respondent does not disclose any mortgage as it is only an equitable mortgage by deposit of title deeds which at that point of time did not require any registration.

19. As discussed above, schedule of property in the suit filed by 2nd respondent Bank in C.S.No.1102 of 1994 mentions about the property situate in Survey No.500 measuring an extent of 1.16 acres with definite boundaries. The said suit was transferred to Debt Recovery Tribunal after constitution of the same. The Debt Recovery Tribunal passed decree only in respect of S.No.500/1. The functions of the Recovery Officer is only in the nature of executing the decree passed by the tribunal. He cannot go behind that decree and make amendments to the original decree. In the instant case, the Recovery Officer having found that the petitioner's property in Claim Petition No.6 of 2014 is not subject to recovery proceedings ought to have stopped with that, but he is exceeded in jurisdiction and attempted to amend the sale certificate issued by the tribunal to which he has no power to do so.

20. Further it is not clear as to how the survey number and boundaries which were originally found in the plaint filed before the Court got amended in the transferred application before tribunal. Assuming that they were amended by adopting proper procedure before the competent judicial Fora, the

Recovery Officer cannot revert back to the original position without following any due procedure laid down in law.

21. As stated supra, the schedule to the plaint described the property in issue fall in Survey No.500, that was amended as 500/1 in the schedule found in the transfer application. If at all the survey number has to be amended as 500 instead of 500/1, it can be done only by the Court which amended the plaint and not through Recovery Officer.

22. Even though the auction purchasers namely the respondents 3 to 5 had taken steps to amend the survey numbers of the property, they have approached the Recovery Officer in I.A.SR.No.5621 of 2012 in D.R.C.No.97 of 1998 before the Recovery Officer, Debt Recovery Tribunal-1, Chennai and not the tribunal or High Court. The Recovery Officer has no power to correct or amend the schedule to the plaint or the decree. However, at a later point of time they have withdrawn the said petition for the reasons known to them. Now what they could not achieve directly, is sought to be achieved through the claim petition filed by the 8th respondent without notice to the writ petitioners. By this time, the writ petitioners have gained an accrued right over the property by length of time.

23. Therefore, the effect of the Recovery certificate and the order passed by the Recovery Officer of the Debts Recovery Tribunal in claim petition No.6 of 2014 leads to the following consequences;

1. Recovery Certificate issued by the tribunal is for a different property other than the one mortgaged with the Bank.
2. The sale pursuant to the wrong Recovery certificate issued to the wrong property has become unenforceable;
3. Consequently, the auction sale conducted by the Recovery officer has become null and void;
4. The order passed in the claim petition insofar as reading survey No.500/1 as Survey No.500 is ultravires.
5. The Debt Recovery Tribunal alone is the competent to make the amendments in the original proceedings and without getting main order amended or varied or modified by the competent forum, consequential order passed by the Recovery Officer as to the identity of the property is not sustainable. Without there being any clear identity of the property, attachment or taking of possession of the writ petitioners' property is illegal and as such it is not sustainable in the eye of law.

24. Therefore, the writ petitioners are bound to succeed and the respondents 1 to 5 have to work out their remedies in the manner known to law.

25. In the result, the Writ Petitions are allowed. No costs. Consequently, the connected W.M.P.Nos.35402 and 35404 of 2016 are closed.

sd/-
Assistant Registrar(insp.cell)

// True Copy//

Sub Assistant Registrar

msr

To
1. The Recovery Officer,
Debt Recovery Tribunal-I,
6th Floor, Spencer Towers,
770-A, Anna Salai,
Chennai 600 002.

2.The Branch Manager,
Indian Bank,
Adhithanar Salai Branch,
Chennai 600 002.

+1cc to Mr.S.Anuradha Balaji, Advocate, sr. no.47865
+2cc to Mr.G.Ethirajulu, Advocate, sr. no.47639,47638
+1cc to Mr.G.Ethirajulu, Advocate, sr. no.47463
+1cc to Mr.P.Solomon Francis, Advocate, sr. no.47401

W.P.No.41429 and
41430 of 2016

W.M.P.Nos.35402 and
35404 of 2016

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RMP (08/07/2019)

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