



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD) .No.19912 of 2019

and

W.M.P. (MD) .Nos.16411 and 16413 of 2019

L.Jeya Jothimany

... Petitioner

Vs.

1.The Authorized Officer,
Canara Bank
K.Pudur Branch
Madurai-7.

2.M/s.SPL Sea Foods
58, Jeya Complex,
S.T.C.Main Road,
Singarapuram,
Madurai-5.

3.Mrs.Sahaya Mabel Sheeja
Jeya Complex
S.T.C.Main Road,
Singarapuram,
Madurai-16

4.L.Baskaran

... Respondents

PRAYER:This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Sale notice dated 09.08.2019 issued by the first respondent to conduct auction on 17.09.2019 as per the description of property mentioned in the impugned Sale notice quash the same and consequently, forebear the 1st respondent from conducting auction on 17.09.2019 as per the description of properties mentioned in the impugned sale notice dated 09.08.2019.



For Petitioner

: Mr.T.Joseph Jeyakumar

For R1

: Mr.Pala.Ramasamy

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O R D E R

(Order of this Court was made by T.S.SIVAGNANAM, J)

Heard Mr.T.Joseph Jeyakumar, learned counsel appearing for the petitioner and Mr.Pala.Ramasamy, learned counsel appearing for the first respondent.

2.By consent of either side, this writ petition is taken up for disposal.

3.The petitioner is the mother of the fourth respondent and mother-in-law of the third respondent. The fourth respondent availed a loan from the first respondent/Bank and he is a defaulter and action was initiated to recover the loan by bringing the property in question for sale by public auction.

4.The petitioner's case is that she is the rightful owner of the property and if the auction sale takes place, it would prejudice her interest and title over the property. It is pointed out by the learned counsel for the first respondent/Bank that the property has been mortgaged and the fourth respondent had right over the property because of a gift deed executed by the petitioner in favour of the fourth respondent and his wife third respondent vide gift deed dated 19.09.2005, registered as document No.2647/2005. Based on the said document, the loan has been advanced. It appears that sale notice was issued to bring the property for sale, which was challenged by the fourth respondent by filing an appeal before the Debt Recovery Appellate Tribunal which entertained the appeal and granted an interim order subject to conditions. However, the conditions were not fulfilled and the said petition was dismissed. Now, the second sale notice is being issued.

5.The learned counsel for the petitioner would strenuously contend that the recitals of the gift deed does not empower the fourth respondent to mortgage the property, as he has got only a right of enjoyment. Unfortunately, such a plea cannot be countenanced in a writ proceeding. It is for the petitioner to work out her remedies against her son and daughter-in-law. Furthermore, we find that such a plea at a belated stage is a clear act of misuse. Therefore, at the instance of the petitioner, we cannot interfere with the impugned sale notice.



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6. For the above reason, this Writ Petition stands dismissed.
No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

Ns

+1 CC to M/s.PALA.RAMASAMY, Advocate (SR-87490[F] dated 18/09/2019)

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JMN(04.10.2019) 3P : 2C