

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.2643/2020

Govindammal

.. Petitioner

Versus

1.The District Magistrate/District Collector,
Tirupur District.

2.The Authorised Officer
M/s.State Bank of India
Stressed Assets Management
Branch, No.1112, Raja Plaza
Avinashi Road, Coimbatore 641037.

3.M/s.Tiruppur Surya Hitec Apparel Private
Limited, No.5, M.P.Nagar Extension
Surya Prabha Garden, Tirupur.

4.Mrs.K.Radhambigai

5.Gomathi Spinning Mills India Private Limited
rep.by the Director, Door No.20-C,
Venkateshpuram, 5th Street,
Thopputhottam, Thiruppur District.

.. Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of certiorari calling for the records pertaining to the order dated 08.10.2018 in Reference No.6203/2017/C3 passed by the 1st respondent and quash the same.

For Petitioner :	Mr.P.Tamilavel
For R1 :	Mr.R.Vijayakumar, AGP
For R2 :	Mr.M.L.Ganesh

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

- (1) By consent, the writ petition is taken up for final disposal. Mr.Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the 1st respondent.
- (2) The petitioner is the mother of the 4th respondent herein and she is one of the Directors of the 3rd respondent/Company - borrower. The petitioner would state that her husband Mr.Arunachala Gounder, died intestate on 29.11.1972 and after his demise, the 4th respondent herein - her daughter filed a suit in OS.No.8/1990 on the file of the Court of Subordinate Judge, Tirupur at Coimbatore against the petitioner herein and other legal heirs for partition and separate possession and vide Compromise, the final decree came to be passed on 29.06.1990.
- (3) According to the petitioner, as per the said Final Decree dated 29.06.1990, originally she had an extent of 0.65 and half acres of land and the 4th respondent had an extent of 1 acre of land, as per the Rought sketch annexed to the said judgment and decree. The petitioner would further aver that 0.23 and half acres and 1 acre of land belong to her as well as the 4th respondent herein, are adjacent lands. She would also aver that on 13.02.2003, she sold a portion of the land admeasuring to an extent of 0.23 and half acres of land out of 0.65 and half acres and the 4th respondent had sold 28.85 cents of land out of 1 acre to Tvl.K.M.Thangaraj and K.M.Subramanian, vide registered Document No.89/2003 registered on the file of the office of the Sub Registrar [Joint], Tirupur and after the sale, her daughter-4th respondent herein, was in possession of 68 1/2 acres of land.
- (4) The petitioner would further aver that as per the compromise yielded out by the 4th respondent, she was allotted a land admeasuring to an extent of 9845 1/2 sq.ft., on the western side of the 1 acre of land on 18.02.2008, vide Settlement Deed bearing Document No.1630/2008 registered on the file of the office of the Sub Registrar [Joint], Tirupur, and after settlement, the 4th respondent is having only 45.98 cents of land. The petitioner claims to be in possession of the land which is the subject matter of the said settlement and it is also assessed to statutory levies.
- (5) The petitioner would also aver that on 13.11.2018, the 2nd respondent came to the schedule mentioned property where the petitioner is residing and tried to take forceful possession and despite explanation offered that the property in question

absolutely belongs to her, by virtue of the said settlement, the 2nd respondent was not prepared to hear the same. The petitioner also applied for encumbrance and came to know that the 4th respondent has created an equitable mortgage dated 02.05.2012 in favour of the 2nd respondent by including her property which is also the subject matter of the said settlement.

- (6) The petitioner also became aware of the order passed by the 1st respondent dated 08.10.2018, which is impugned herein, under section 14[1] of the SARFAESI Act and filed an appeal before the Debts Recovery Tribunal at Coimbatore, to declare that the 'B' Schedule property mentioned therein, is not the secured asset on the 2nd respondent/Bank and the Memorandum of equitable mortgage created by the 4th respondent in favour of the 2nd respondent/Bank in respect of the 'A' Schedule property by including her 'B' Schedule property as null and void and to declare the E-Auction sale notice dated 22.08.2018 as illegal and void with a further direction, directing respondents 1 and 4 not to proceed under the SARFAESI Act in respect of the 'B' Schedule property and also prayed for awarding compensation.
- (7) The learned counsel for the petitioner would submit that pending disposal of the application, the petitioner also prayed for interim orders and despite numbering of the said SARFAESI appeal, for want of Presiding Officer, she could not move the said Tribunal for interim orders and that she should move before the DRT at Madurai and on account of the same also, the petitioner is unable to move the said Tribunal for interim relief and in the interregnum, the 2nd respondent/Bank again attempting to take forceful possession of the property through the revenue officials and hence, the petitioner is constrained to approach this Court by filing the present writ petition.
- (8) This Court has carefully considered the arguments advanced by the learned counsel for the petitioner and also perused the materials placed before it.
- (9) This Court, taking into consideration, the above facts and circumstances and without going into the merits of the claim projected by the petitioner in this writ petition, permits the petitioner to submit a detailed representation by enclosing relevant and authenticated documents to the 2nd respondent/Bank within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 2nd respondent/Bank is directed to consider the said representation on merits and in accordance with law within a further period of two weeks thereafter and communicate the decision taken, to the petitioner as well as to the 4th respondent and till such time, the 2nd respondent/Bank shall defer further proceedings in terms of the order of the 1st respondent dated 08.10.2018. It

is also made clear that till the disposal of SA.No.518/2018 pending on the file of the DRT, Coimbatore, the petitioner shall not create any third party rights in respect of the said immovable property in question.⁹

(10)The writ petition stands disposed of accordingly. No costs.

05/02/2020

This matter posted under the caption 'For Being Mentioned' on 10.02.2020 in the presence of Mr.R.Vijayakumar, Additional Government Pleader for the 1st Respondent and of Mr.M.L.Ganesh, Advocate appearing for the 2nd Respondent, the court made the following order:

The matter is listed under the caption 'for being mentioned' at the instance of the learned standing counsel appearing for the second respondent-Bank.

2. In the light of the submission made by the learned counsel for the petitioner that the fourth respondent, who is her daughter, had allotted the land admeasuring an extent of 9845 ½ sq.ft., on the western side of one acre of land by way of a registered settlement deed bearing Document No.1630 of 2008 dated 18.2.2008 registered on the file of the Sub Registrar, Tiruppur in favour of the petitioner and that the security document in the form of equitable mortgage came into being on 2.5.2012, this Court granted liberty to the petitioner to submit a detailed representation by enclosing relevant and authenticated documents to the second respondent-Bank with a further direction to the bank to entertain the same and give a disposal in accordance with law within the stipulated time, and till such time, to defer further proceedings, in terms of the order of the first respondent dated 8.10.2018.

3. The learned standing counsel appearing for the second respondent-Bank has drawn the attention of this Court to the counter affidavit of the second respondent dated 7.2.2020 as well as the typedset of documents dated 6.2.2020, and would submit that the said security in the form of equitable mortgage has been created by the fourth respondent as early as on 23.8.2005 and there are series of letters between 2006 and 2013 confirming the extension of equitable mortgage, and that the memorandum relating to the deposit of title deeds also came to be registered on 11.7.2013, and in the light of the said fact, the alleged registered settlement deed dated 18.2.2008 executed

in favour of the petitioner by her daughter, namely, the fourth respondent came into being after the letter of intent to create the equitable mortgage dated 23.8.2005, and that the only course open to the petitioner is to pursue the alternative remedy already availed by her in S.A.No.518 of 2018. It is also brought to the knowledge of this Court that right inside the secured asset, the petitioner had also put up a superstructure to prevent the further recovery action initiated by the Bank to realize its dues and hence, prays for appropriate orders.

4. The learned counsel for the petitioner, in response to the said submission, would submit that S.A.No.518 of 2018 is pending on the file of the Debts Recovery Tribunal at Coimbatore for nearly one year and odd, for want of a Presiding Officer and as such, since the petitioner is residing in the superstructure put up on the land, which is the subject matter of the settlement, this Court may give appropriate protection.

5. The learned standing counsel appearing for the second respondent-Bank, replying to the said contention, would submit that a counter affidavit has been filed by the second respondent-Bank by taking the very same stand taken in the present counter affidavit dated 7.2.2020 and therefore, the petitioner and the fourth respondent, being her daughter, are colluding with each other to prevent the Bank from proceeding further with the recovery action.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it. In the light of the contents of the counter affidavit supported by the typedset of documents, which would disclose that the letter of intent to create equitable mortgage came into being much earlier than the registered settlement deed dated 18.2.2008, executed by the fourth respondent-Daughter in favour of the petitioner-Mother, this Court is of the considered view that the direction issued in paragraph-9 of the final order dated 5.2.2020 has to be recalled and it is, accordingly, recalled.

7. Since the petitioner has already availed the alternative remedy of filing S.A.No.518 of 2018 before the Debts Recovery Tribunal at Coimbatore, this Court directs the Presiding Officer, Debts Recovery Tribunal at Madurai, in-charge of the Debts Recovery Tribunal at Coimbatore, to accord priority and dispose of the S.A.No.518 of 2018 in accordance with law as expeditiously as possible, but not later than four weeks from the date of receipt of a copy of this order. The writ petition

stands disposed of, accordingly. Consequently, W.M.P.Nos.3080 to 3082 of 2020 are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ss
To

- 1.The District Magistrate/District Collector,
Tirupur District
- 2.The Authorised Officer
M/s.State Bank of India
Stressed Assets Management
Branch, No.1112, Raja Plaza
Avinashi Road, Coimbatore 641037
- 3.The Registrar
Debts Recovery Tribunal
Coimbatore
- 4.The Registrar
Debts Recovery Tribunal
Madurai

+2cc to Mr.P.Tamilavel, Advocate sr.10242, 8939
+1cc to Mr.M.L.Ganesh, Advocate sr.10365

WP.No.2643 of 2020

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