

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA
WP.No.10477 of 2020
and WMP.Nos.12733 & 12735 of 2020

1.Panneerselvam
2.G.Saravanan
3.Thirulogasundar
4.S.Manju

..Petitioner

Versus

1.The Authorised Officer,
Corporation Bank,
R.S.Puram Branch,
NO.594/3, Obli Towers,
D.B.Road, R.S.Puram,
Coimbatore.

2.I.Vijayakumar

3.Durairajpoornam

...Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus forbearing the respondents from dispossessing us from D.NO.5, Kasthuribai Nagar, 2nd cross, Ganapathy, Coimbatore 641 006 except in accordance with law pending S.A.No.208 of 2019 on the file of the Debts Recovery Tribunal, Coimbatore.

For Petitioner : Ms.Kavya Bhaskaran
for Mr.R.Jayaprakash
For Respondents : Mr.Umapathi for R1

ORDER

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

The petitioner claiming to be the Tenant under the second respondent in respect of the property bearing Door No.5, Kasthuribai Nagar, 2nd Cross, Ganapathy, Coimbatore 641 006. The learned counsel appearing for the petitioner would submit that

the 2nd respondent has availed Housing Loan from the 1st respondent and alleging that he has committed default in payment of dues, action was initiated under the provisions of the Securitisation of Financial Assets and Enforcement of Security Interest Act, 2002, Act (in short 'SARFAESI Act') and the said property was brought to auction, wherein the 3rd respondent has purchased the said property. It is also the submission of the learned counsel for the petitioner that the 2nd respondent also made a challenge to the auction proceedings by filing an appeal in S.A.No.208 of 2019, on the file of the Debts Recovery Tribunal, Coimbatore and since, the 3rd respondent without resorting to due process of law, tried to dispossess the petitioners, they also filed O.S.Nos.689, 688, 720 and 721 of 2019, on the file of the Court of Principal District Munsif, Coimbatore, praying for a judgment and decree for permanent injunction restraining the 3rd respondent from illegally dispossessing them and the said Suits were also pending.

2. The primordial submission of the learned counsel appearing for the petitioner is that since the petitioners had become Tenants under the 2nd respondent through unregistered Lease Deeds dated 21.09.2011, 12.09.2016, 24.11.2016, 28.06.2017, 19.10.2018 and 11.12.2018 respectively, they cannot be dispossessed either by the 1st respondent or by the 3rd respondent, without resorting to due process of law and hence prays for appropriate orders.

3. Ms.Umapathi, learned counsel appearing for the 1st respondent would submit that even as per the averments made in paragraph no.4 of the affidavit filed in support of the Writ Petition, the unregistered Lease Deeds were came into being after registration of the security documents for the year 2006 and would further add that the points urged by the learned counsel for the petitioner revolves around adjudication on disputed questions of facts and further pointed out that the Suits in O.S.Nos.689 of 2019 etc., filed by them are also pending adjudication on the file of the Court of Principal District Munsif, Coimbatore, wherein the petitioners can workout their remedy and further pointed out that the petitioners are also having efficacious alternative remedy under Section 17 of the SARFAESI Act and therefore, the Writ Petition per se is not maintainable and prays for disposal of this Writ Petition.

4. Though respondents 2 and 3 have been served and their names appeared in the cause list, there is no representation on their behalf.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. The petitioners placed heavy reliance upon the unregistered Lease Deeds dated 21.09.2011, 12.09.2016, 24.11.2016, 28.06.2017, 19.10.2018 and 11.12.2018 respectively, and as per the averments made in paragraph no.4 of the affidavit, the so called unregistered Lease Deeds came into being after registration of the security documents in favour of the 1st respondent in the year 2006.

7. It is a well settled position of law that the unregistered Lease Deeds per se is inadmissible in law and it can be utilized only for collateral purpose and not for primary purpose.

8. Be that as it may, the petitioners alleging attempts made by the 3rd respondent by dispossessing them illegally / unlawfully, also filed O.S.Nos.689, 688, 720 and 721 of 2019 on the file of the Court of Principal District Munsif, Coimbatore for permanent injunction restraining the 3rd respondent from dispossessing without resorting to due process of law and also having the benefit of interim orders, pendency of the said Suits.

9. In the considered opinion of this Court, the petitioner is also having an effective alternative remedy if the 1st respondent resorts to any further action under Section 17 of the SARFAESI Act. In the light of the fact of filing of the Civil Suits by the petitioners as well as the subsistence of interim orders in the said Suits, coupled with the fact that the petitioner is also having an efficacious alternative remedy under Section 17 of the SARFAESI Act, the Writ Petition is not maintainable.

10. In the result, the Writ Petition is dismissed as not maintainable and however, if the petitioners are so advised, if it is available to them under law, they are always at liberty to avail the remedy before the competent forum in accordance with law. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

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To

1.The Authorised Officer,
Corporation Bank,
R.S.Puram Branch,
NO.594/3, Obli Towers,
D.B.Road, R.S.Puram,
Coimbatore.

2.The Principal District Munsif,
Coimbatore.

+lcc to Mr.N.Umapathi, Advocate, SR.No.33344
+lcc to Mr.R.Jayaprakash, Advocate, SR.No.32915

WP.No.10477 of 2020

SVI (CO)
KKV/19/11/2020