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W.A.(MD)No.1261 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 02.12.2020
CORAM

THE HON'BLE Mr. JUSTICE N.KIRUBAKARAN
AND
THE HON'BLE Mr. JUSTICE B.PUGALENDHI

W.A. (MD)No.1261 of 2016
and
C.M.P. (MD)Nos.8600 and 8601 of 2016
Against WMP(MD).10525/16 in WP(MD).14171/16

P.Sivakumar .. Appellant/2nd Respondent

Vs.

1.P.Sasikumar ... Respondent/Petitioner

2.The Deputy Registrar of Co-operative Societies,
Kulithalai,
Karur District. .. Respondent/1st Respondent

Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 05.08.2016, passed in W.M.P.(MD)No.10525 of
2016 in W.P.(MD)No.14171 of 2016.

Prayer in WMP(MD). 10525 of 2016 :

To grant ad-interim stay, staying the operation of the impugned
auction notice issued by the 1st respondent in CEP No.2/2014-15
dated 05.07.2016 pending disposal of this WP.

Prayer in WP(MD). 14171 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of
India, praying this Court to issue a Writ of Certiorari to call for
the records on the file of the 1st respondent in connection with the
impugned auction notice issued by him in CEP No.2/2014-15 dated
05.07.2016 and quash the same as illegal and ultra vires.

For Appellant	:	Mr.D.Shanmugaraja Sethupathi
For R1	:	No Appearance
For R2	:	Mrs.J.Padmavathi Devi Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

This Writ Appeal has been filed by the appellant, who is facing
recovery proceedings at the hands of the second respondent, against
the order dated 05.08.2016, passed in W.M.P.(MD)No.10525 of 2016 in
W.P.(MD)No.14171 of 2016. Pursuant to the surcharge proceedings,

<https://hcservices.ecourts.gov.in/hcservices/>



the joint family property belonging to both the appellant and the first respondent was sought to be auctioned by the second respondent. However, the first respondent has challenged the auction notice stating that he has got right over the said property. In the said Writ Petition, an interim order has been granted directing the second respondent to demarcate or sub-divide the property in the presence of the appellant as well as the first respondent and bring the half of the property belonging to the appellant for auction, against which, the present Writ Appeal has been filed.

2. We have heard Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the appellant and Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the second respondent and perused the materials available on record.

3. It is evident from the records that the Writ Petition was filed in the year 2016 and the interim order has been passed as early as on 05.08.2016. Moreover, because of pendency of the present Writ Appeal, the Writ Petition, which is pending from the year 2016, could not be disposed of.

4. At this juncture, it would be worthwhile to quote the decision rendered by a Division Bench of this Court in **Southern Academy of Maritime Studies, Rep. by Director, Maritime Education Private Ltd., Chennai Vs. A.M.Akash and others** reported in **CDJ 2019 MHC 2548 [W.A.No.1819 of 2019, decided on 14.06.2019]**, wherein this Court after considering the earlier decisions of this Court, held that a writ appeal is not maintainable against an interim order.

5. In view of the above, the Writ Appeal is dismissed with a request to the learned Single Judge, to dispose of W.P.(MD)No.14171 of 2016, at the earliest. It is made clear that this Court has not expressed any opinion on the merits of the pending Writ Petition. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note :- In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Deputy Registrar of Co-operative Societies,
Kulithalai,
Karur District.

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+1 CC to M/s.D.SANMUGA RAJA SETHUPATHI, Advocate (SR-23795[F] dated
03/12/2020)

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