

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.3131 of 2021

R.Ganeshan

... petitioner

Vs

1 The Authorised Officer
Union Bank of India No. 1087 D
Krishna Towers
Lakshmi Mills Junction Avinashi
Road Coimbatore 641 037

2 G. Velusamy (a) A.K. Velusamy

3 V. Saravanan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondent No.1 to leave the petitioner property measuring to an extent of nine cents comprised in Survey Number 317/1 New Sub Division No. 317/1E situated at Karumathampatti Village Palladam Taluk Coimbatore District from the public auction notice of 1st respondent dated 2.1.2021 by considering his representation dated 19.1.2021

For petitioner :: Mr.K.Myilsamy

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner claims to have purchased a part of an immovable property from the second respondent. The petitioner says that the second respondent, subsequently, purported to mortgage the property in favour of the first respondent bank. The present petition is for a direction on the first and second respondents to demarcate the petitioner's share of the property.

2. The writ petition is utterly misconceived. To begin with, no writ of the kind sought may be issued against the second respondent, which is a private party. Further, if it is the writ petitioner's grievance that a prior transfer has been

disregarded by the transferor in effecting a subsequent transfer, the writ petitioner's remedy is before a civil court. It may also be permissible for the writ petitioner to carry the issue to the Debts Recovery Tribunal upon measures in respect of the property being taken by the first respondent secured creditor under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 .

3. At any rate, disputed questions of fact arise in the present case, particularly as to whether the transaction had, in fact, been effected or a dummy transaction is being attempted to be demonstrated at the behest of the second respondent-debtor. Such questions of fact cannot be conveniently addressed in any summary proceedings decided on affidavit evidence. Since there is an efficacious alternative remedy available to the writ petitioner, the petition is not entertained in this extraordinary jurisdiction.

4. W.P.No.3131 of 2021 is dismissed. There will be no order as to costs. Consequently, W.M.P.No.3557 of 2021 is closed.

Sd/-

Assistant Registrar (CS.VII)

/True Copy/

Sub Assistant Registrar

To:

The Authorised Officer
Union Bank of India No. 1087 D
Krishna Towers
Lakshmi Mills Junction Avinashi
Road Coimbatore 641 037

+1cc to Mr.K.Myilsamy, Advocate SR.NO.8943

AKM/03.03.21/ 2P-3C/

W.P.No.3131 of 2021