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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.13492 of 2020

V.Sujatha

Petitioner

vs.

1. The Deputy Registrar of Co-operative Societies,
Dharmapuri Circle,
Dharmapuri.
2. T.T.25, Dharmapuri Co-operative Press,
Rep. by its President,
No.84, Industrial Park,
Dharmapuri - 5.
3. The Sub Registrar,
Parur,
Dharmapuri District.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to raise the order of attachment of the petitioner property in S.No.188 measuring 2.98.0 Hectare Pallipatti Village, Harur Taluk, Dharmapuri District.

For Petitioners : Mr.M.S.Palaniswamy

For Respondents : Mr.L.P.S.Shanmuga Sundaram
Special Government Pleader
for R1 & R2

Mr.A.Selvendiran
Government Advocate for R3

O R D E R

The subject matter of challenge in the present writ petition is the attachment order passed by the 1st respondent dated 22.09.2016.



2.The case of the petitioner is that the subject property originally belonged to her husband who is said to have derived his right from his grand father and this property was settled in favour of the petitioner by virtue of a registered settlement deed dated 09.07.2014. The petitioner applied for an encumbrance certificate before the 3rd respondent and found that the 1st respondent has passed an order attaching the subject property through proceedings dated 22.09.2016. Aggrieved by the same, the present writ petition has been filed before this Court.

3.The 1st respondent has filed a counter affidavit and additional counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

4.It is humbly submitted that the petitioner herein viz., Tmt.V.Sujatha is the wife of Thiru.K.V.Senthilkumar, who is the son of Thiru.K.Viswanathan, the President of D.D.25 Dharmapuri Co-operative Press and during this tenure as the President of the press Thiru.K.Viswanathan has caused loss to the press.

5.It is submitted that for the loss caused by Thiru.K.Viswanathan, President of the Co-operative Press, pending and herein proceedings in ARC.3391/16/SaPa1, dated 22.09.2016, notice in ARC.3391/16/SaPa1, dated 22.09.2016, was issued under Section 167(1) of Tamilnadu Co-operative Societies Act, 1983 to Thiru.K.Viswanathan to furnish security to the tune of Rs.10,00,000/- and under Section 167(2) of Tamilnadu Co-operative Societies Act, 1983 order of attachment of the properties standing in the name of Tmt.Sujatha, W/o.Thiru.K.V.Senthilkumar who is the son of Thiru.K.Viswanathan former President of the Dharmapuri Cooperative Press viz and in patta No.716, S.No.188, 2.98.0 Hectare at Pallipatti Village, the said notice and the order have been issued by the Deputy Registrar of Cooperative Societies, Dharmapuri.

6.It is humbly submitted that the petitioner's husband Thiru.K.V.Senthilkumar is legal heir of Thiru.K.Viswanathan, President of the Cooperative Press and he is legally liable to make good the loss caused by his father. It is submitted that Thiru.K.V.Senthilkumar in order to avert legal action against him, has cunningly transferred the land by way of settlement deed registered on 09.07.2014 in Document No.735 on the file of Sub Registrar, Parur. It is submitted that the said land is not belong to



the petitioner and therefore, the conditional attachment passed by the Deputy Registrar of Cooperative Societies, Dharmapuri is legally valid.

7.It is humbly submitted that the Present Writ Petition filed against the conditional attachment is not maintainable. The Writ Petitioner has to prefer her claim or make objection before the sale officer to the attachment stating the ground upon which she claims that such property is not liable for attachment and if such claim or objection is made, the sale officer shall investigate the claim or objection and dispose of it on merits as per the provision of Rule 135 of Tamil Nadu Co-operative Societies Rules, 1983.

4.The relevant portions in the additional counter affidavit are extracted hereunder:

5.In Paragraph (5) of the affidavit, the petitioner has stated that her husband Thiru.K.V.Senthilkumar has executed a settlement deed dated 09.06.2014 in her favour. It is submitted that the property settled by Thiru.K.V.Senthilkumar to his wife, the petitioner herein originally belonged to Thiru.K.Viswanathan, Thiru.K.V.Senthilkumar, the husband of the petitioner having the knowledge about the involvement of his father in the affairs of the society, has executed the settlement deed to his wife, to avert attachment of the property in Survey No.188 measuring 2.98.0 hectare in Pallipatti Village, Morappur Taluk, Dharmapuri District.

6.As regards the averments contained in Paragraph (6) of the affidavit, it is submitted that the Deputy Registrar of Cooperative Societies, Dharmapuri in notice under Section 167(1) of the Tamil nadu Cooperative Societies Act, 1983, bearing no.ARC No.3391/16/SF1, dated 22.09.2016 has been issued to Tmt.Sujatha, relative of Thiru.K.Viswanathan to furnish security to the sum of Rs.10,00,000/- towards the arbitration claim initiated for the recovery of loss caused by Thiru.K.Viswanathan former President of the Cooperative Press failing which conditional attachment order will be issued. The notice issued legally valid.

7.As regards the averments contained in Paragraph (7) of the affidavit, it is submitted that though Thiru.K.Viswanathan died on 10.03.2013, the conditional attachment notice was issued for attaching

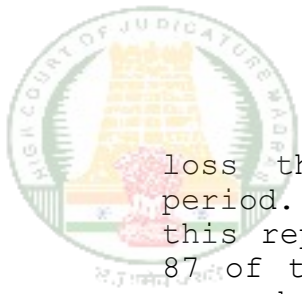


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the property standing in the name of the petitioner Tmt.Sujatha, to whom the property by originally belonged Thiru.K.Viswanathan was settled in favour of the petitioner by the husband of Thiru.K.V.Senthilkumar, the son of Thiru.K.Viswanathan. It is submitted that though Section 90(3)(a)(ii) of the Tamilnadu Cooperative Societies Act, 1983, prescribes the period of limitation of 6 years for initiating arbitration, clause (b) of sub section 9(a) of Section 90 of the Tamilnadu Cooperative Societies Act, 1938, empowers the Registrar to admit the dispute after the expiry of the period of limitation. It is therefore submitted that in view of this provision, the conditional attachment notice and the conditional attachment order are legally valid.

5.The learned counsel appearing on behalf of the petitioner questioned the very maintainability of the ARC proceedings initiated under Section 90 of the Co-operative Societies Act in the year 2016 on the ground that it has been initiated against a dead person viz., K.Viswanathan who had died as early as on 10.03.2013. That apart, it was further submitted that the property in question does not belong to the above said K.Viswanathan and it absolutely belongs to the husband of the petitioner who derived the right from his grand father. Therefore, the learned counsel for the petitioner submitted that the property which does not belong to Mr.K.Viswanathan has been illegally attached by the 1st respondent. The learned counsel further submitted that Section 90 (9)(a)(ii) of the Co-operative Societies Act specifically provides for a time limit for taking any action, which is six years from the date on which an act or omission with reference to the dispute arose and in this case, the alleged misappropriation/loss was caused to the Society during the period 1996 to 2000 and the proceedings have been initiated in the year 2016. Therefore, the proceedings itself is barred by the limitation. The learned counsel therefore submitted that the continuation of the order of attachment is illegal and is liable to be raised by passing an order in this writ petition.

6.Per contra, Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader appearing on behalf of the 1st respondent submitted that the above said K.Viswanathan was the President of the Society during the period from 1998 till 2001 and he was involved in misappropriation and had caused loss to the Society. It was further submitted that an enquiry was ordered under Section 81 of the Co-operative Societies Act in the year 2002 and a report was submitted on 15.07.2002 by the Enquiry Officer by finding that a sum of Rs.41,69,593.79/- was the total



loss that was suffered by the Society during the relevant period. The learned counsel further submitted that, pursuant to this report, sur-charge proceedings were initiated under Section 87 of the Act against the said Viswanathan and five others and an order was passed on 06.04.2008. After the sur-charge order was passed, proceedings were initiated for executing the order on 30.04.2008 and a petition was also filed before the 1st respondent, which was taken on file in Petition No.14/2008-2009. It was submitted that the loss that was ascribed as against the above said Viswanathan was to the tune of Rs.9,61,595.30/- along with 21% interest. A specific stand was taken to the effect that the execution proceedings are pending.

7.The learned counsel appearing on behalf of the 2nd respondent submitted that the property in question belonged to K.Viswanathan and it was inherited by his son which in turn was settled in favour of the petitioner and therefore, this property is subject to attachment for the purpose of recovering the loss that was caused to the Society. It was further submitted that the petitioner need not have rushed to this Court by filing the present writ petition and it was always open to the petitioner to make his claim/objections against the attachment of the property under Rule 135 of the Co-operative Rules, 1988. It was therefore submitted that in view of an alternative remedy available to the petitioner, the present writ petition is not maintainable before this Court. The learned counsel in order to substantiate this submission, also relied upon the judgment of the Division Bench of this Court in the case of E.Kalivani vs. Deputy Registrar, The Cooperative Society and Another reported in 2019 SCC OnLine Mad 8436. By placing reliance upon this judgment, the learned counsel submitted that this Court did not entertain a writ petition of a similar nature and the petitioner was directed to make the objections under Rule 135 before the appropriate authority.

8.This Court has carefully considered the submissions made on either side and also the materials available on record.

9.The 1st respondent has come up with a clear case that even during the life time of K.Viswanathan, enquiry was ordered under Section 81 of the Act and a report was also submitted by the Enquiry Officer dated 15.07.2002 wherein the total loss caused to the Society was assessed at Rs.41,69,593.79/- It is further stated that sur charge proceedings were initiated under Section 87 of the Act against K.Viswanathan and five others and final order was also passed on 06.04.2008. Pursuant to the said order, proceedings were also initiated for execution and it is said to be pending before the 1st respondent in Petition No.14/2008-2009. A specified amount has been fixed against the said K.Viswanathan to the tune of Rs.9,61,595.30/- along with 21% interest.



10. It is not known as to why the respondents did not proceed further with the execution proceedings and in spite of the expiry of the said Viswanathan in the year 2013, proceeded to initiate ARC proceedings under Section 90 of the Act in the year 2016. It is beyond dispute that such proceedings cannot be initiated as against a dead person. Therefore, even without going into the issue of limitation, such proceedings on the face of it smacks with illegality. When the very basis of the proceedings is found to be illegal, this Court need not drive the petitioner to avail alternative remedy under Section 135 of the Co-operative Societies Rules. The order of attachment pursuant to initiation of ARC.3391/16, cannot stand the test of law and it requires the interference of this Court.

11. When already execution proceedings have been initiated and it is pending from the year 2008 and it is the case of the respondent that the property in question belongs to the deceased K.Viswanathan, it is not known as to why they cannot proceed further with the execution proceedings and attach the property and recover the amount. It is not known as to whether the ARC Proceedings were initiated in ignorance of the pending execution proceedings before the 1st respondent.

12. The Society has incurred a huge loss and it has to be recovered. Whether the property in question belonged to K.Viswanathan originally and thereafter, it was settled in favour of the petitioner or the property belongs to the grand father of the husband of the petitioner and thereafter, it was settled in favour of the petitioner, are questions which can be decided by the appropriate authority when the property is attached and objections are made in the pending execution proceedings. This Court need not render any findings in this regard. It goes without saying that as and when any such steps are taken, the petitioner has to be put on notice since, she has become the owner of the property by virtue of the registered settlement deed dated 09.07.2014.

13. In view of the above discussion, there shall be a direction to the 2nd respondent to proceed further with the execution proceedings pending in Petition No.14/2008-2009 for recovery of the loss sustained by the Society. In the course of the execution proceedings, it will always be left open to the 2nd respondent Society to the attach any property that belonged to the deceased K.Viswanathan. If the subject property is also made a subject matter of attachment in the execution proceedings, sufficient opportunity shall be given to the petitioner to make her objections as against the attachment. This process shall be completed by the 1st and 2nd respondents, within a period of six weeks from the date of receipt of copy of this order. Since this



Court has interfered with the ARC proceedings, the order of attachment shall be kept in abeyance till a final decision is arrived in the execution proceedings.

14. This writ petition stands allowed with the above directions. No Costs.

Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

ssr

To

1. The Deputy Registrar of Co-operative Societies,
Dharmapuri Circle,
Dharmapuri.
2. The President,
T.T.25, Dharmapuri Co-operative Press,
No.84, Industrial Park,
Dharmapuri - 5.
3. The Sub Registrar,
Parur,
Dharmapuri District.

+1cc to M/s.Palanisamy, Advocate, S.R.No.37340
+1cc to the Government Pleader, S.R.No.37729

W.P No.13492 of 2020

PCH (CO)
SU (24/08/2021)