



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.[MD]No.1001 of 2021

K.Santhi

: Appellant

Vs.

The Deputy Registrar of
Co-operative Societies (Ground Floor),
Thiruparamkundram Salai,
Palanganatham Roundana,
Madurai - 3.

: Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 18.03.2021, in W.P.[MD]No.6088 of 2021 and allow the writ appeal.

PRAYER IN WP(MD) . 6088 OF 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ in the nature of Mandamus or Direction, directing the respondent to consider the petitioners representation dated 18.02.2021 requesting the respondent to raise the attachment made on the petitioners personal properties bearing 1)Re.S.No.15/1, situated at Athikulam Village, madurai north tk, 2)D.No.5 T.S.No.805/6, 7 and 8, situated at Ismailpuram 9th Street, Munisalai, Madurai - 9 3) D.No.7F, T.S.802/3, situated at Ismailpuram 10th street, Munisalai, Madurai -9 and pass order within a time limit fixed by this Honble Court and thus render justice

For Appellant : Mr.PT.S.Narendravasan

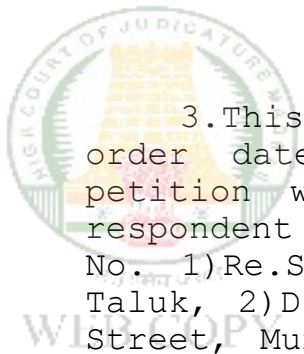
For Respondent : Mr.R.Baskaran,
Standing Counsel for Government

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

With the consent on either side, this Writ Appeal is taken up for final disposal.

2.Heard MrPT.S.Narendravasan, learned Counsel appearing for the appellant and Mr.R.Baskaran, learned Standing Counsel for Government appearing for the respondent.

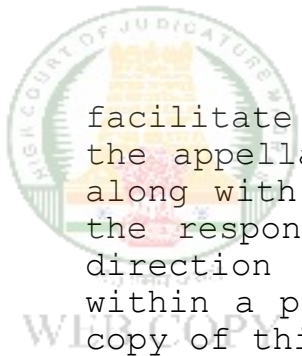


3.This appeal by the writ petitioner is directed against the order dated 18.03.2021, in W.P.[MD]No.6088 of 2021. The writ petition was filed by the appellant for a direction upon the respondent to raise the attachment made on the properties bearing No. 1)Re.S.No.15/1, situated at Athikulam Village, Madurai North Taluk, 2)D.No.5 T.S.No.805/6, 7 and 8, situated at Ismailpuram 9th Street, Munisalai, Madurai - 9, 3)D.No.7F, T.S.802/3, situated at Ismailpuram 10th Street, Munisalai, Madurai - 9, as the appellant claimed that it is her personal property and it is not liable for attachment for recovery of the dues payable by her husband Mr.P.Kanaga Sabapathi, against whom surcharge proceedings were initiated.

4.The learned Single Bench dismissed the writ petition on the ground that details have not been disclosed and also taking note of the fact that the appellant's husband was unsuccessful in the challenge of the surcharge proceedings which were confirmed upon dismissal of the revision petition in C.R.P.[NPD][MD]No.1209 of 2009 dated 24.06.2019. It is not in dispute that several properties have been attached much prior to the surcharge proceedings being finalized. Ultimately, the proceedings were upheld since the Civil Revision Petition filed by the appellant's husband was dismissed. During the pendency of the CRP, the appellant's husband died as a result of which, the appellant and her two children were brought on record as legal heirs. However, this will not preclude the appellant from contending that her separate personal property has been attached by the department for recovery of the dues payable by her late husband.

5.In terms of the provisions of the Tamil Nadu Co-operative Societies Rules, 1988, the authority is entitled to attach the property, if he has reason to believe with the decree which may ultimately be passed would become a paper decree and to safeguard the interest of revenue, order of attachment can be passed. However, upon such order being passed, if such person makes a claim that the property is not for attachment, he is entitled to seek for raising his order of attachment. This is precisely what the appellant has done. The appellant's claim has to be independently examined. No doubt, it is true that the appellant has to establish that the property which is attached is her personal and individual property. Furthermore, in terms of Rule 118 of the Tamil Nadu Co-operative Societies Rules, the property which is required to be sold is not always the entire property but only to the extent of the property of the deceased judgment debtor.

6.In fact, the learned Single Bench while dismissing C.R.P. [NPD][MD]No.1209 of 2009 dated 24.06.2019 has pointed out this aspect in paragraph No.7 of the order. Therefore, we are of the view that the respondent should consider the petition filed by the appellant dated 18.02.2021, for raising the attachment and enquiry be conducted after opportunity to the appellant or her authorised representative and a speaking order shall be passed. In order to



facilitate the respondent to comply with the order of this Court, the appellant is directed to forward one more copy of the petition along with the copy of this judgment and upon receipt of the same, the respondent shall consider the petition in terms of the above direction and pass orders on merits and in accordance with law within a period of twelve [12] weeks from the date of receipt of a copy of this judgment.

7. Accordingly, the Writ Appeal stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

MR/RR

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 (Ground Floor),
Thiruparamkundram Salai,
Palanganatham Roundana,
Madurai - 3.

+1 CC to M/s.PT.S.NARENDRA VASAN, Advocate (SR-18697[F]
dated 03/06/2021)

+1 CC to M/s.SPL GP (SR-18815[F] dated 04/06/2021)

W.A. [MD]No.1001 of 2021

02.06.2021

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