



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)NO.16153 OF 2021

and

W.M.P(MD)No.13015 of 2021

L.Meena

:Petitioner

.VS.

1.The District Collector,
Kanyakumari District,
at Nagercoil.

2.The Special Tahsildar(Stamps-II),
The District Registrar Office,
Marthandam,
Kanyakumari District.

3.The Authorized Officer,
Canara Bank,
Kulasekharam Branch,
Kulasekharam,
Kanyakumari District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus forbearing the respondent from taking physical possession of the Petitioner's property comprised in Re.Survey No.9/11A in Meicode Village, Mathar Desom, Kalkulam Taluk, Kanyakumari District ad-measuring 14 cents as per the sale deed in Document No.1090 of 2003, dated 26.6.2002 while proceeding against the property of the Petitioner's husband ad-measuring 6 ½ cents in the same survey number under Section 14 (1) of the SARFAESI Act.

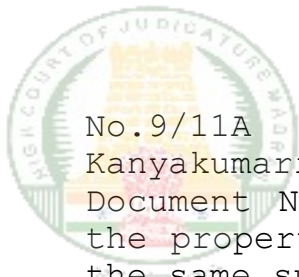
For Petitioner	:Mr.C.K.M.Appaji
For Respondents	:Mr.P.Thilakkumar
1 and 2	Government Pleader
For Respondent-3	:Mr.P.Pethu Rajesh

O R D E R

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

The Petitioner has filed the above Writ Petition to issue a Writ of Mandamus forbearing the respondents from taking physical possession of the Petitioner's property comprised in Re.Survey

<https://hseervicescourts.gov.in/hseervices>



No.9/11A in Meicode Village, Mathar Desom, Kalkulam Taluk, Kanyakumari District ad-measuring 14 cents as per the sale deed in Document No.1090 of 2003, dated 26.6.2002 while proceeding against the property of the Petitioner's husband ad-measuring 6 ½ cents in the same survey number under Section 14(1) of the SARFAESI Act.

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2.It is not in dispute that the Petitioner's husband availed loan from the third respondent Bank. According to the Petitioner, he has not availed any loan or stood as a guarantor for her husband for availing the loan. In paragraph No.3 of the affidavit filed in support of the Writ Petition, the Petitioner herself has stated that she purchased the property comprised in R.S.No.9/11A measuring an extent of 14 cents and an extent of three cents in R.S.No.364/4, Atoor Village, Ettacode Desom. Further, she has stated that since her property and husband's property are lying in R.S.No.9/11, both properties were clubbed together and after demolishing the old house, they have constructed a new house in their properties. Now the Petitioner has filed the Writ Petition to forbear the third respondent from taking possession of the property.

3.If the Petitioner is aggrieved over the action initiated by the third respondent under the provisions of SARFAESI Act, the remedy available to her is to file an appeal before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. As per Section 17, any person (including the borrower) aggrieved by any of the measures referred to under Section 4 of Section 14 taken by the Secured Creditor or his authorized Officer, he may approach the Debts Recovery Tribunal having jurisdiction, within 45 days from the date on which such measures had been taken. According to the Petitioner, she is neither a borrower nor a guarantor. As per the provision of Section 17 of the SARFAESI Act, the Petitioner being an aggrieved party, she can approach the Debts Recovery Tribunal and challenge the measures taken by the third respondent Bank under the provisions of the SARFAESI Act.

4.In such view of the matter, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

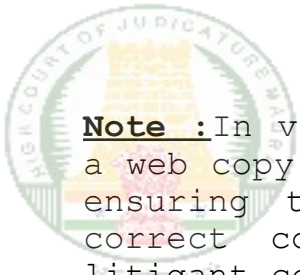
Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsn



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.

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To

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at Nagercoil.

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The District Registrar Office,
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Kanyakumari District.

3.The Authorized Officer,
Canara Bank,
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Kulasekharam,
Kanyakumari District.

+1 CC to M/s.P.PETHU RAJESH, Advocate (SR-28629[F] dated 09/09/2021)

+1 CC to M/s.SPL GP (SR-28670[F] dated 09/09/2021)

W.P (MD) NO.16153 OF 2021

and

W.M.P (MD) No.13015 of 2021

08.09.2021

DJ(CO)

KB(16.09.2021) 3P 6C