



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.2474 of 2022 and
W.M.P. No.2632 of 2022

K.Udayakumar

... Petitioner

vs

1.The Branch Manager,
Housing Development Finance
Corporation Ltd. (HDFC),
Deepan Towers,
No.374, E.V.N.Road,
Erode-638 009.

2.S.Sampathkumar

3.Muthukumari

4.Minor Varshini

5.Minor Varshan

(Respondents 4 and 5 are minors represented
by Advocate/Court Guardian Smt.Rama Prabha
in O.S. No.113 of 2018 on the file of the
District Judge, Erode District)

6.C.Jansirani

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Declaration declaring the act of the first respondent in auctioning the property mortgaged vide Deposit of title deeds dated 10.09.2015 registered as document number 2768 of 2015 on the file of Sub Registrar, Surampatti, Periyasemur Village, Erode District consequently issuing sale certificate in favour of the second respondent vide sale certificate dated 27.03.2019 registered as document number 1209 of 2019 on the file of Sub Registrar, Surampatti, Erode District without notice to the petitioner or vacating the order of attachment before judgment dated 22.01.2019 passed in I.A. No.274 of 2018 in O.S. No.113 of 2018 on the file of the District Judge, Erode District are all illegal done by abuse of process of law,



arbitrary, null and void consequently direct the first respondent to conduct fresh auction over the said property after notice to the petitioner and vacating the order of attachment before judgment passed in I.A. No.274 of 2018 in O.S. No.113 of 2018 on the file of the District Judge, Erode District.

For Petitioner : Mr.R.Selvakumar

ORDER

[Order of this Court was delivered by T.RAJA, J.]

This petition has been filed for issuance of writ of Declaration declaring the act of the Branch Manager, Housing Development Finance Corporation Ltd., the first respondent herein in auctioning the property mortgaged vide Deposit of title deeds dated 10.09.2015, registered as Document No.2768 of 2015 on the file of Sub Registrar, Surampatti, Periyasemur Village, Erode District and consequently issuing sale certificate in favour of the second respondent vide sale certificate dated 27.03.2019, registered as Document No.1209 of 2019 on the file of Sub Registrar, Surampatti, Erode District, without notice to the petitioner or vacating the order of attachment before judgment dated 22.01.2019 passed in I.A. No.274 of 2018 in O.S. No.113 of 2018 on the file of the District Judge, Erode District are all illegal done by abuse of process of law, arbitrary, null and void and consequently directing the first respondent to conduct fresh auction over the said property, after notice to the petitioner and vacating the order of attachment before judgment passed in I.A. No.274 of 2018 in O.S. No.113 of 2018 on the file of the District Judge, Erode District.

2.Learned counsel appearing for the petitioner submitted that one A.C.Madhanraj, the husband of the third respondent herein had borrowed a sum of Rs.20,00,000/- on 06.04.2016 from the petitioner for his business expenses by executing a promissory note in his favour promising to repay the said sum with interest at the rate of Rs.1.50 per month per hundred either on demand of the plaintiff or his order. However, on 22.11.2017, the said A.C.Madhanraj died in a road accident. Therefore, the petitioner instituted an Original Suit in O.S. No.113 of 2018 on the file of the District Judge, Erode District against the legal heirs, namely, wife, daughter, son and mother of the deceased A.C.Madhanraj for recovery of the said amount with accrued interest out of the estate of the deceased. During the pendency of the said suit, the petitioner has also filed an application in I.A. No.274 of 2014 in O.S. No.113 of 2018 for an order of attachment before judgment of the deceased property and a counter



has been filed by the Court Guardian on behalf of respondents 4 and 5 denying the receipt of the loan from the petitioner that he has no right to seek the relief against the minor share in the property. Learned counsel for the petitioner further submitted that when the Trial Court has granted an order of attachment before judgment of the petition mentioned property, without any notice to the petitioner, the first respondent Bank cannot bring the property into public auction and sold the same and therefore, the petitioner could not be in a position to enjoy the fruits of the decree in the event of succeeding before the Civil Court in O.S. No.113 of 2018. Therefore, the petitioner has come to this Court seeking a declaration declaring the act of the first respondent in auctioning the property mortgaged vide Deposit of title deeds dated 10.09.2015, registered as Document No.2768 of 2015 on the file of Sub Registrar, Surampatti, Periyasemur Village, Erode District and issuing the sale certificate in favour of the second respondent vide sale certificate dated 27.03.2019 are illegal.

3. But we are not convinced with the justification given by the petitioner. When the petitioner has filed Original Suit in O.S. No.113 of 2018 for recovery of money against the legal heirs of the deceased, namely, wife, daughter, son and mother of the deceased, respondents 3 to 6 and the order of attachment before judgment dated 22.01.2019 granted in I.A. No.274 of 2018 in O.S. No.113 of 2018 is pending for consideration, namely, whether the order of attachment is going to be confirmed or not by the Civil Court, we are of the considered view that this petition filed by the petitioner is pre-mature one at this stage. Secondly, the first respondent, Bank, being the secured creditor has brought the property of the deceased into public auction on 17.01.2019 and sold the property way back on 27.03.2019 by issuing the sale certificate to the second respondent. Therefore, we are unable to entertain this petition. Accordingly, this petition stands dismissed giving liberty to the petitioner to work out his remedy before the appropriate forum in accordance with law. Consequently, W.M.P. No.2632 of 2022 stands closed. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

vga



To

The Branch Manager,
Housing Development Finance
Corporation Ltd(HDFC)
Deepan Towers, NO.374, EVN Road,
Erode-638 009.

+1cc to Mr.R.Selva Kumar, Advocate SR.No.10029

W.P.No.2474 of 2022 and
W.M.P. No.2632 of 2022

GPL(CO)
CB(03/03/2022)