



W.A.No.1842 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

Writ Appeal No.1842 of 2022

Subashini

.. Appellant

Vs.

1. The Registrar of the District cum
The Deputy Registrar of Co-operative Societies
Office of the Deputy Registrar of
Co-operative Societies
Kanchipuram.
2. The Chinglepet District PWD Highways
TWAD Industries and Commerce Department
Employees Co-operative Thrift and Credit Society
Kanchipuram
Rep. by its Secretary
Taluk Office Compound
Kanchipuram.

.. Respondents

Prayer: Appeal under Clause 15 of Letters Patent against the order dated 13.07.2022 made in W.P.No.17641 of 2022.



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For the Appellant : Mr.Srinivas
For Mr.T.Sathiyamoorthy

For the Respondents : Mr.K.M.D.Muhilan
Government Advocate
for Respondent-1

No appearance
for Respondent-2

JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

This writ appeal has been filed challenging the order of the learned Single Judge dated 13.07.2022 dismissing the writ petition in W.P.No.17641 of 2022 filed by the appellant with liberty to her to establish her right by filing independent proceedings in a Civil Court of competent jurisdiction to declare that the property in question was purchased by her out of her own money.

2. Heard Mr.K.M.D.Muhilan, learned Government Advocate appearing for the first respondent. Though notice was served on the second respondent, they have not chosen to appear before this Court.

3. According to the appellant, the proceedings initiated by the



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first respondent invoking power under Section 143 of the Tamil Nadu Co-operative Societies Act, 1983 (for brevity "the Act") read with Rules 119(1) and 126(b)b(1) of the Tamil Nadu Co-operative Societies Rules, 1988 (for brevity "the Rules"), to auction sale the appellant's property is erroneous, as no award or decree was passed against the appellant. Thus, the order of the learned Single Judge dismissing the writ petition challenging the said proceedings, in the absence of any award or decree against the appellant, is liable to be set aside.

4. It is contended that when the Act does not create any presumption or fiction to treat the proceedings initiated against the husband as the proceedings initiated against the wife nor any presumption to treat the property of the wife as the property of the husband or to treat the property purchased by the wife as the one purchased from the money given by the husband, the entire proceedings initiated by the first respondent in bringing the property belonging to the appellant wife for sale, is without any justification. Thus, the property purchased by the appellant wife cannot be considered as one of the property that has been purchased from the



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money given by the husband, when the husband was facing the proceedings under Section 87 of the Act.

5. In support of the above contentions, a reference was made to the judgment of this Court in an identical matter in WA (MD) No.1511 of 2018 dated 11.12.2018 [*The Management, R.A.No.18, Thiruvengadapuram Primary Agricultural Co-operative Credit Society v. S.Rathinam*], wherein, it was held that so long as the provisions of the Tamil Nadu Co-operative Societies Act or Rules framed therein do not contemplate a statutory fiction or presumption in favour of the Society to proceed against the property of a stranger, the proceedings initiated against the property of the stranger cannot be sustained. Accordingly, the property purchased by the appellant, being the property belonging to a stranger, cannot be a subject matter of the proceedings initiated against the husband of the appellant under Section 87.

6. Pursuant to the auction initiated under Section 87 of the Act, the appellant made objections to the respondent under Rule 135 of the



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Rules stating that the property purchased by her cannot be attached as it was purchased out of the money earned by her, which was lying in fixed deposit with the bank from the year 2010 onwards. The appellant has also furnished the relevant fixed deposit receipts in the typed set of papers. Without considering the said objections, the respondent Society proceeded with auction of the appellant's property, which is *per se* illegal and contrary to the provisions of Rules.

7. In this regard, it would be appropriate to extract Rule 135 of the Tamil Nadu Co-operative Societies Rules, 1988 here under:

"135. Investigation of claims and objections to attachment of property:-

(1) Where any claim is preferred to, or any objection is made to, the attachment of any property attached under these rules on the ground that such property is not liable to such attachment, the sale officer shall investigate the claim or objection and dispose of it on merits:

Provided that no such investigation shall be made when the sale officer considers that the claim or objection is frivolous.

(2) Where the property to which the claim or



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objection relates has been advertised for sale, the sale officer may postpone the sale pending the investigation of the claim or objection.

(3) Where a claim or an objection is preferred, the party, against whom an order is made by the sale officer, may institute a suit within six months from the date of the order to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order made by the sale officer shall be conclusive.

(4)(a) Any deficiency of price which may happen on a resale held under sub-rule (16) of rule 121 or clause (k) or (n) of sub rule (2) of rule 126 by reason of the purchaser's default and all expenses attending such resale shall be certified by the sale officer to the Registrar and shall at the instance of either the decree-holder or the judgment debtor be recoverable from the defaulting purchaser under the provisions of these rules. The costs, if any, incidental to such recovery shall also be borne by the defaulting purchaser.

(b) Where the property, may on the second sale, fetch higher price than at the first sale, the defaulting purchaser at the first sale shall have no claim to the difference or increase."



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8. A cursory perusal of the above Rule would make it clear that if any claim is preferred or any objection is made to the attachment of any property on the ground that such property is not liable to attachment, a duty is cast on the Sale Officer to investigate the claim or objection and dispose of the same on merits. In the present case, the appellant has made a written objection to the attachment of her property stating that she was in no way connected with the order of attachment as she was not liable to face any action to be taken by the respondent Society. However, for the reasons best known to the respondent Society, the objection made by the appellant was not considered as per Rule 135.

9. Further, the impugned order of the learned Single Judge also does not show that the objection made by the appellant has been dealt with. However, the learned Single Judge has directed the appellant to work out her remedy by approaching a competent civil forum, which, in our considered opinion, cannot stand to the reasons given under Rule 135 of the Rules. Therefore, the impugned order is liable to be set



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aside.

10. In view of the above, the order of the learned Single Judge is set aside and the first respondent is directed to consider the objection of the appellant and dispose of the same on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. It is needless to mention that the appellant shall also be heard while considering the objections of the appellant.

In the result, the impugned order is set aside with direction. Accordingly, the writ appeal is allowed. There will be no order as to costs. Consequently, CMP No.13458 of 2022 is closed.

(T.R., ACJ.) (D.K.K., J.)
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