



W.P(MD)No.11788 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.11788 of 2022

Meenkashi

... Petitioner

Vs.

1.The General Manager,
UCO Bank, Head Office-2,
India Exchange Place (3rd Floor)
Kolkatta-700 001.
State of West Bengal.

2.The Deputy General Manager,
UCO Bank Zonal Office,
New No.328, Old No.169,
2nd Floor, Thambuchetti Street,
Paris, Chennai-600 001.

3.The Branch Manager,
UCO Bank, Madurai Main Branch,
No.90/92, East Avanimoola Street,
Madurai-625 001.

4.Vasuki

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents 1 to 3 to cancel the mortgage deed registered as document No.5556/2006, dated



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29.11.2006 and return the mortgaged original sale deed in Document No. 1046/1973, dated 10.08.1973 and original settlement deed in Document No. 5094/2005, dated 30.12.2005 by considering the petitioner's representation dated 05.11.2020.

For Petitioner : Mr.T.Lenin Kumar

For R1 to R3 : Mr.P.T.S.Narendravasan

ORDER

Heard the learned counsel appearing for the petitioner, learned standing counsel appearing for UCO Bank. The fourth respondent could not be served because she is said to be on the run.

2. The petitioner and the fourth respondent are sisters. They along with their brother executed the petition mentioned deed of mortgage in favour of the third respondent. The account has now been classified as non-performing asset. UCO Bank proposes to initiate SARFAESI proceedings. AT this stage, the petitioner has come forward to clear the mortgage liability. There cannot be any objection to the petitioner's proposal. The petitioner wants the original title deed to be returned to her. The creditor has natural apprehensions. This is because, the mortgage was executed not only by the petitioner but also two others and therefore, the Bank is answerable to the other executants also.



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3. It is now stated that the petitioner's brother Shanmugam who was also one of the co-executants is no more and that he died a bachelor and that he had executed a Will dated 02.04.2021 bequeathing his share in the property. Since the Will is un-registered and it has not been propounded in the manner known to law, I cannot take note of the same. Since the said Shanmugam is said to have died a bachelor, his share in the property will devolve in equal measure on the petitioner and the fourth respondent. Thus, as on date, the writ petitioner has only 50% share in the property. The petitioner through her counsel gives an undertaking that she will not deal with the property in respect of the remaining 50% share of the fourth respondent. Though such an undertaking has been given before this Court, it is not possible for this Court to monitor its compliance.

4. I therefore suggested that the writ petitioner can present this order passed by this Court in this writ petition for registration before the jurisdictional SRO so that in respect of the petition mentioned property, an entry will be created to the effect that the petitioner can deal only to the extent of her 50% share. The petitioner through her counsel informs the Court that she would do so. As and when this writ order is registered before the jurisdictional SRO, based on application and also the execution of an indemnity



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bond, the third respondent is directed to hand over the original title document to the petitioner.

5. The schedule of property is as follows:-

“In Trichirappalli Registration District, Thiruverumbur Sub Registration District, Krishnasamuthiram Village, Keelakumaresapuram in Survey No.398/1 an extent of 6.5 cents out of Ac.59.60 cents in western side (in corresponding 2921 sq.ft) within the following boundaries:-

On the North by	East-West Common Road
On the East by	South-North Cart Track
On the South by	House belonging to Krishnaveni
On the West by	House belonging to Ramalakshmi”

6. The Writ Petition is thus disposed of with the following directions:-

(A) It is declared that the writ petitioner has only 50% share in the property set out in the schedule of this order.

(B) The petitioner shall register this writ order before the jurisdictional SRO

(C) the petitioner undertakes not to deal with 50 % share of the fourth respondent.

(D) After this writ order is registered, subject to execution of indemnity bond by the writ petitioner, the third respondent shall hand over the petition mentioned title deed to the writ petitioner.



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WEB COPY (E) Upon the petitioner clearing the mortgage liability, the deed of mortgage shall also be cancelled by the third respondent.

No costs.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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