



W.P.(MD)No.18909 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P(MD)No.18909 of 2022
and
W.M.P.(MD)No.13802 of 2022

G.Venkatakrishnan

... Petitioner

Vs.

1.The Authorized Officer / Chief Manager,
Canara Bank,
Thallakulam,
Madurai District.

2.V.Guru Chakaravarthi

3.G.Karthick Narayanan

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, to direct the 1st respondent to forbear to E-Auction petitioner property which is situated in Madurai District, Madurai North Taluk, Vilangudi I-Bit Village, Anjal Nagar, 2nd Street, Re-Survey No.49/1 and 49/2, Plot No.17, to an extent of 7 Cents, on the basis of Intended E-Auction Sale Notice, dated 29.07.2022 issued by the 1st respondent Bank and to consider the petitioner's representation, dated 03.08.2022.



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For Petitioner : Mr.R.M.Suresh
For 2nd Respondent : Mr.R.Pandivel
Standing Counsel

* * *

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

The Writ Petition is filed for issuance of a Writ of Mandamus, to direct the 1st respondent to forbear the E-Auction of petitioner's property which is situated in Madurai District, Madurai North Taluk, Vilangudi I-Bit Village, Anjal Nagar, 2nd Street, Re-Survey No.49/1 and 49/2, Plot No.17, to an extent of 7 Cents, on the basis of Intended E-Auction Sale Notice, dated 29.07.2022 issued by the 1st respondent Bank and to consider the petitioner's representation, dated 03.08.2022.

2. Heard Mr.R.M.Suresh, learned counsel for the petitioner and Mr.R.Pandivel, learned Standing Counsel for the first respondent. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3. This writ petition is misconceived. The petitioner is the grand-son of one S.Venkatasubaraju. It is admitted by the



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petitioner that the property, which is the subject matter, belongs to his grand-father S.Venkatasubaraju. He purchased the property on 23.09.1961. The petitioner's grand-father S.Vekatasubaraju died on 19.11.1993, leaving behind his wife by name Krishnaveni and his only son V.Guru Chakaravarthi, who is the second respondent in this writ petition. It is admitted that the petitioner's father V.Guru Chakaravarthi executed a gift deed in favour of petitioner's brother, the third respondent herein. It is also admitted that the petitioner's brother has availed loan from the first respondent bank by mortgaging the property, which was gifted to him by his father. Stating that the petitioner, as a grand-son of S.Venkatasubaraju, is also entitled to a share in the property, the above writ petition is filed by the petitioner to forbear the first respondent from bringing the property for sale for the default committed by the petitioner's brother, who has borrowed money and created an equitable mortgage in respect of the property in favour of the respondent bank.

4. The contention of the respondent bank is that the petitioner's brother, who is the borrower and mortgagor, has set up the petitioner to thwart the sale. From the narration of the facts,



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this Court is unable reject the said submission made by the learned Standing Counsel for the respondent bank. The petitioner is one of the witness to the gift deed dated 05.05.2017 executed by his father in favour of his brother. He has not filed any suit for partition claiming 1/3rd share.

5. From the admitted facts, as seen from the affidavit filed in support of the petition, the petitioner has no right in the property of S.Venkatasubaraju, grand-father of the petitioner. When it is admitted by the petitioner himself that the property is the self acquired property of petitioner's grand-father who died intestate on 19.11.1993, the property will devolve on his son V.Guru Chakaravarthi, the second respondent herein. It is also admitted that the petitioner's grand-mother also died on 04.03.2010 and hence, there is no scope for the petitioner to claim any share in the property of his grand-father, which was inherited by his father as his absolute property. This Court is unable to accept the claim of the petitioner that he is entitled to a share by claiming that the property of S.Venkatasubaraju as a joint family property. In view of the judgment of Full Bench of this Court in ***The Additional Commissioner vs P.L. Karuppan Chettiar*** reported in ***AIR 1979 Mad 1***, the petitioner's claim cannot be countenanced.



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6. In view of the above, the Writ Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is also dismissed.

[S.S.S.R., J.] [S.S.Y., J.]
22.08.2022

Index : Yes / No
sj



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and

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sj

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