



W.P.No.16400 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.05.2023

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

AND

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.No.16400 of 2023

and

W.M.P.Nos.15764, 15767 and 15769 of 2023

1. G.Gnanamani
2. Dr.V.Sudhakar Rajesh .. Petitioners

Vs.

1.Union Bank of India,
Formerly Andhra Bank,
Kodambakkam Branch,
No.4/9, 4th main Road,
United India Colony,
Kodambakkam, Chennai -24.

2.M/s.Amma Marunthagam,
Rep.by Prop.Beulah Joyce,
5/9, Sangothiamman Koil,
2nd Cross Street,
Rajakilpakkam, Chennai – 600 073.

3.V.Paul Athisayaraj

4.Thenmozhi .. Respondents



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Prayer: Writ Petition under Article 226 of the Constitution of India praying for a writ of declaration to declare the sale of property measuring 1676 sq.ft and building thereon in Door No.5/9, Senkothaiamman Koil Street, Raja Kilpakkam, Chennai 73, made on 30.03.2022 by the 1st Respondent Bank to and in favour of the 4th Respondent and the subsequent proceedings as void and illegal and consequently permit the petitioners to redeem the mortgage by discharging the liabilities.

For the Petitioners : M/s.B.Aparna

ORDER

(Made by V. LAKSHMINARAYANAN, J.)

This writ petition seeks for a writ of declaration to declare that the sale of the property measuring 1676 sq.ft situated at Door No.5/9, Senkothaiamman Koil Street, Raja Kilpakkam, Chennai 73 made on 30.3.2022 by the Union Bank of India as illegal and to permit the petitioners to redeem the mortgage executed by one Vincent Sigamani in favour of the Bank.

2. The facts transpires that the aforesaid Vincent Sigamani taken loan from the Union Bank of India and according to the learned



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counsel for the petitioners, a sum of Rs.42,00,000/- is outstanding from the said loan. The Bank had initiated proceedings in O.A.No.58 of 2020 and the said O.A was dismissed for default on the following grounds :

"Representative Counsel for applicant bank is present. D-1 is represented by counsel who contemplated to file change of vakalat. LRs of D-2 are represented by Ld. counsel who submitted that they intend to file IA for impleading themselves in this OA. Steps not taken by applicant bank against deceased D-2, since 2020, but filed a full satisfaction memo stating that mortgaged asset is sold under SARFAESI, while it is the express case of LRs of deceased D-2/mortgagor that no notices were ever served upon them with regard to sale of the property. Hence full satisfaction memo is returned. Only a junior counsel is present, despite passing over the matter twice and who does not know the stage of the matter or next proceeding. As applicant bank had not prosecuted the matter despite availing time for more than two years. OA stands dismissed for default and non-prosecution."

3. On coming to know of the above facts, the petitioners plead



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that they were not put on notice in any of the proceedings under SARFAESI and whatever proceedings initiated had been done only against the said Vincent Sigamani.

4. On going through the order under Section 14 of SARFAESI Act, we are able to notice that even the application seeking possession under Section 14 of the SARFAESI Act was filed against the deceased Vincent Sigamani alone. Vincent Sigamani passed away on 04.02.2021 and the Bank had obtained an order to take possession of the property on 17.6.2022. It is trite that an order passed on a dead person is void and nothing would flow out of such order.

5. Be that as it may, we are not convinced to grant the declaration that the petitioner seeks, because they have already approached the Debts Recovery Tribunal III in S.A.Diary No.758/2022 (SASR 7697/2022).

6. The learned counsel for the petitioners states that the sale, which is said to have been conducted in the name of the dead person,



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has not fructified into the issuance of sale certificate or registration thereof.

7. We, therefore, mould the relief that has been sought for by the petitioners in the following terms:

(i) The return by the Debts Recovery Tribunal dated 27.7.2022 that the SA is barred by time is not a proper endorsement, since, on that day, Vincent Sigamani was no more and none of the legal heirs were put on notice of the sale. They came to know of the sale only on 07.09.2022 and even before that they have approached the Debts Recovery Tribunal by way of an application on 25.7.2022. Therefore, the return of the papers by the Debts Recovery Tribunal stating that the appeal is barred by time is not supported by facts or law. Therefore, the Debts Recovery Tribunal-III, Chennai is directed to take the appeal on file and not reject it on the ground that it is barred by time; and

(ii) The petitioners are granted twelve weeks' time to deposit the outstanding amount of Rs.42,00,000/- on or before 17.8.2023. The first instalment shall be paid on or before 28.7.2023 and the remaining



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amount on or before 17.8.2023. Till then, the Bank is restrained from taking any further action pursuant to the alleged sale held in the name of the dead person. In default of payment of the aforesaid amount, the Bank shall proceed in accordance with law.

8. With the above direction, this writ petition is disposed of. There will be no order as to costs. Consequently, WMP Nos.15764, 15767 and 15769 of 2023 are closed.

(B.P., J.) (V.L.N., J.)
25.05.2023

Index : Yes/No
Neutral Citation : Yes/No

kpl/ms

Note : Order copy may be issued subject to payment of separate Court fee by the Petitioners.

To

Union Bank of India,
Formerly Andhra Bank,
Kodambakkam Branch,
No.4/9, 4th main Road,
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Kodambakkam, Chennai -24.



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B.PUGALENDHI, J.,
and
V.LAKSHMINARAYANAN, J.

(kpl/ms)

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WMP Nos.15764, 15767 &
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