



WEB COPY



W.P.No.19568 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.09.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.19568 of 2023
and W.MP. Nos.18836 of 2023 & 18835 of 2023

P. Dhanam

...Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies,
Namakkal Circle,
RMS Mansion,
Trichy Road,
Namakkal.

2.The Sales Officer Cum Cooperative
Sub registrar/Field Officer
Singalandhupuram Primary Agricultural Co-op. Society
Rasipuram Taluk,
Namakkal District.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for records on the 1st and 2nd respondent made in Form Nos. 6 & 7 Execution Petition No.82/2009/Sa pa dated 14.03.2023 and 10.04.2023 respectively and quash the same.

For Petitioner

: N. Umapathi



W.P.No.19568 of 2022

For Respondent 1 : Mrs. S. Anitha,
Special Government Pleader
For Respondent 2 : Mr. N. Naveen Kumar,
Government Advocate

ORDER

The writ petition has been filed challenging the Form 6 and Form 7 notices issued by the respondents 1 and 2 attaching the properties of the petitioner in execution of surcharge order passed against her husband.

2. The impugned order of attachment has been questioned by the petitioner mainly on the ground that the property sought to be attached was acquired by petitioner as early as 10.12.1986 under gift deed executed by her husband namely Paramasivam. However, the surcharge proceedings initiated against her husband was relating to alleged misappropriation that had taken place during the year 2002. Therefore, the petitioner submitted that respondents are not entitled to attach the properties of the petitioner in execution of surcharge order passed by the respondents against her husband.

3. The learned Special Government Pleader appearing for the 1st respondent and Mr.N.Naveen Kumar, learned Government Advocate appearing



for the 2nd respondent by referring to the counter affidavit filed by the 1st respondent submitted that the petitioner has not acquired property out of her own funds but she acquired the property under gift settlement deed executed by her husband and therefore a duty is cast upon the petitioner to settle the dues and liabilities of the donor namely her husband.

4. It is settled law under Section 128 of Transfer of Property Act, the liability of the donee is restricted to the liabilities of the donor at the time of execution of gift deed. In the case on hand, the gift deed was executed by petitioner's husband as early as 10.12.1986. However, a perusal of the surcharge order would suggest the petitioner's husband Paramasivam was fastened with the liability to the tune of Rs.1,18,122/- in respect of loan accounts mentioned in Sl.Nos. 28 and 29 therein. The loan accounts mentioned in Sl.Nos. 28 and 29 dealt with under surcharge order were of the year 2002. In such circumstances, the alleged liability of petitioner's husband could commence only from the date of disbursal of said loans on 04.12.2022 not before that date. Hence, the contentions made by the learned counsel for the respondents that as a donee petitioner is liable to meet the liabilities of the



W.P.No.19568 of 2023

donor cannot be accepted in the light of Section 128 of Transfer of Property Act.

5. The petitioner acquired title to the property even in the year 1986 prior to alleged misappropriation. In such circumstances, the respondents are not entitled to proceed against the properties of the petitioner which was acquired in 1986. Accordingly, on the face of it, the attachment order passed by the respondents is unsustainable. Hence, the writ petitioner need not be relegated to avail alternative remedy available under Rule 135 of rules framed under Tamil Nadu Co-operative Societies Act. Therefore, the notices issued by the respondents under Form 6 and 7 are liable to be set aside. Accordingly, the writ petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

11.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
nr



W.P.No.19568 of 2022

To

1.The Deputy Registrar of Cooperative Societies,
Namakkal Circle,
RMS Mansion,
Trichy Road,
Namakkal.

2.The Sales Officer Cum Cooperative
Sub registrar/Field Officer
Singalandhupuram Primary Agricultural Co-op. Society
Rasipuram Taluk,
Namakkal District.



WEB COPY



W.P.No.19568 of 2023

S.SOUNTHAR, J.
nr

W.P No.19568 of 2023
and W.MP. Nos.18836 of 2023 & 18835 of 2023

11.09.2023