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W.P.No.24734 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.24734 of 2022

and

W.M.P.Nos.23671, 23672 and 26834 of 2022

S.Theanmozhi

... Petitioner

Vs.

1.The Sale Officer/Cooperative Field Officer, Arakkonam,
Office of the Deputy Registrar of
Co-operative Societies Office, Ranipet District,
Ranipet.

2.The General Manager,
Arakkonam Co-operative Urban Bank Ltd.,
Arakkonam.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the impugned undated Sale Notice published in Daily Thandi Tamil Edition dated 25.08.2022 fixing the sale on 12.09.2022 issued by the 1st respondent and quash the same.



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For Petitioner : Mr.G.Jeremiah

For R1 : Mr.R.U.Dinesh Raj Kumar
Additional Government Pleader

For R2 : Mrs.G.Thilakavathi
Senior Counsel
Mr.R.Gophinath

ORDER

The writ petition is filed challenging the auction sale notice issued by the 1st respondent dated 25.08.2022.

2. It is the case of the petitioner that property sought to be brought on auction sale under the impugned auction notice was mortgaged by previous owners of the property with the 2nd respondent. According to the petitioner, her adoptive father late T.K.Ranganathan obtained a loan of Rs.5,00,000/- from 2nd respondent/Bank. The 2nd respondent appeared to have obtained an *ex parte* award against the said late T.K.Ranganathan in ARC.No.112 of 1999-2000 for the amount of Rs.5,00,000/-. The adoptive father of the petitioner namely late T.K.Ranganathan died on 16.03.2010. Thereafter, the legal representatives of



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T.K.Ranganathan executed Settlement Deed in favour of the petitioner on 17.06.2010. Subsequently, the wife of T.K.Ranganathan namely Kamalammal also died on 14.05.2015.

3. In these circumstances, the 1st respondent issued impugned auction notice for bringing the mortgaged property for sale. In the impugned auction notice, the 1st respondent only mentioned the name of the debtor viz., late T.K.Ranganathan and name of guarantor viz., late Kamalammal wife of T.K.Ranganathan.

4. The learned counsel for the petitioner submitted that the impugned auction notice issued in the name of deceased judgment debtor is invalid as the 1st respondent failed to bring the legal representatives on record in execution proceedings.

5. The learned Senior Counsel appearing for the 2nd respondent, by producing the copy of the order passed by the Deputy Registrar of Co-operative Societies, Ranipettai, submitted that necessary permission from Deputy Registrar was obtained for proceeding with the execution against the



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legal representatives of the deceased judgment debtor. Therefore, it is the submission of the learned Senior Counsel that there is no irregularity in the impugned auction sale notice issued by the 1st respondent.

6. Rule 118 of Tamil Nadu Co-operative Societies Rules, 1988 framed under the main Act lays down procedure to be followed in case of death of judgment debtor before full satisfaction of the decree, the same reads as follows:-

“118. Procedure to be followed where the judgment-debtor dies before full satisfaction of decree.- (1) Where a judgment-debtor dies before the decree has been fully satisfied, an application under sub-rule (1) of rule 116 may be made against the legal representative of the deceased judgment-debtor and there upon all the provisions of these rules shall, save as otherwise provided in this rule, apply as if such legal representative were the judgment-debtor.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased judgment-debtor which has come to his hands and has not been duly disposed of and for the purpose of ascertaining such liability, the Registrar executing the decree



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may, of his own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as he thinks fit.

(3) Property in the hands of a son or other descendant who is liable under Hindu Law for the payment of the debt of a deceased ancestor in respect of which a decree has been passed, shall be deemed to be the property of the deceased which has come to the hands of the son or other descendant as his legal representative.”

7. Rule 126 (2)(e)(iii) of the Tamil Nadu Co-operative Societies Rules, 1988, says that in case of proclamation of sale, notice shall be given to the decree holder and judgment debtor.

8. Though the learned Senior Counsel for the 2nd respondent produced the proceedings of the Deputy Registrar to show the permission of the Deputy Registrar was obtained for proceeding against the legal representatives of the judgment debtor. In the impugned auction notice, the names of the legal representatives of the judgment debtor are not shown. The impugned notice is issued in the name of dead person, hence, the provisions contained under Rules 118 and 126 (2)(e)(iii) of the Tamil Nadu Co-operative Societies Rules, 1988



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are clearly violated. Therefore, the submission made by the learned Senior Counsel for the 2nd respondent is not acceptable to this Court.

9. Since the impugned auction sale notice is issued in the name of the deceased judgment debtor, the same is liable to be quashed.

10. Accordingly, the impugned auction sale notice issued by the 1st respondent is quashed and the writ petition is allowed. However, it is open to the 1st respondent to issue fresh auction sale notice by mentioning the names of legal representatives of the deceased judgment debtor, after following procedure under Rule 118 of Tamil Nadu Co-operative Societies Rules, 1988, and proceed in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

03.08.2023

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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S.SOUNTHAR, J.

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