



W.P(MD)No.10124 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P(MD)No.10124 of 2022
and
W.M.P(MD)Nos.7191 & 7192 of 2022**

Valarmathi

... Petitioner

VS.

1.The Authorized Officer,
Canara Bank,
No.164/5A-3, Madurai Main Road,
Chekkanurani Branch,
Madurai – 625 514.

2.Vijayalakshmi

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Cr.M.P.No.296 of 2022, dated 2022 on the file of the learned Chief Judicial Magistrate, Madurai and to quash the same as illegal and consequently, to forbear the respondent from anyway dispossessing the petitioner from the property of house building bearing Door No.1A, T.S.No.1403/1, Ward No.10, at present Madurai Corporation Ward No.14, Muthaiah Chettiyar Padithurai Road, Sellur, Thallakulam Sub Registrar, Madurai District.

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For Petitioner : Mr.V.Santhakumaresan

For R – 1 : Mr.V.Balasubramanian
Standing Counsel

For R – 2 : No appearance

ORDER

(Order of the Court was made by D. KRISHNAKUMAR, J.)

The petitioner has filed the present Writ Petition seeking for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in Cr.M.P.No.296 of 2022, dated Nil 2022, on the file of the learned Chief Judicial Magistrate, Madurai and consequently, to forbear the respondent from any way dispossessing the petitioner from the property of the house building bearing Door No.1A, T.S.No.1403/1, Ward No.10, at present Madurai Corporation Ward No.14, Muthaiah Chettiyar Padithurai Road, Sellur, Thallakulam Sub Registrar, Madurai District.

2.According to the petitioner, the second respondent is the borrower and she had mortgaged the property and borrowed the money and deposited the title deeds in the first respondent Bank. Since the second



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respondent had failed to repay the loan amount, the first respondent Bank issued a possession notice on 18.09.2020, but the same was served to the petitioner.

3.Further, according to the petitioner, the schedule mentioned property was originally purchased by one Mayakkal, who is her mother-in-law. The second respondent is the daughter of the said Mayakkal and the petitioner's sister-in-law. The schedule mentioned property was purchased by Mayakkal through a registered sale deed in the year 1978 vide Document No.3418 of 1978 from her husband's retirement benefits. The said Mayakkal had two children, namely one Ramesh Selvam and the second respondent herein. After the marriage of the second respondent, the said Mayakkal lived with her son Ramesh till his death on 09.12.1999. After his demise, the petitioner looked after the said Mayakkal and maintained her, till her death. On 14.07.1993, the said Mayakkal executed a Will vide Document No.48 of 1993 in favour of his son Ramesh Selvam in respect of the half of the property and another half of the property in favour of the second respondent. Only after issuance of the said possession notice, the petitioner came to the knowledge of the mortgage loan received by the second respondent, by mortgaging the schedule mentioned property. The second



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Will dated 31.08.1995 is alleged to be executed by Mayakkal bequeathing the whole property to the second respondent by cancelling the first Will.

4.Challenging the sale notice, dated 10.02.2022, the petitioner had filed an application in S.A.No.169 of 2022 before the Debts Recovery Tribunal, Madurai. The petitioner had also filed a stay petition in I.A.No.599 of 2022 and the same was dismissed as withdrawn on 18.03.2022, since no sale was held on 15.03.2022. The petitioner filed S.A.SR.No.5603 of 2020 before the Debts Recovery Tribunal, Madurai, challenging the possession notice. The petitioner represented S.A.SR.No.5603 of 2020 on 09.03.2022 even prior to the filing of the application S.A.No.169 of 2022. The same was returned on 29.03.2022 insisting her to pay the necessary fee in the condone delay petition. The petitioner received the return only on 09.05.2022 and represented on 13.05.2022. The said S.A.SR.No.5603 of 2020 is pending before the Debts Recovery Tribunal along with I.A.SR.Nos. 5604 of 2020, 5605 of 2020 and 1958 of 2022.

5.After the dismissal of S.A.No.169 of 2022, the first respondent filed an application in Crl.M.P.No.296 of 2022 under Section 14 of the SARFAESI Act before the learned Chief Judicial Magistrate, Madurai. The



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learned Chief Judicial Magistrate, Madurai allowed the petition and appointed an Advocate Commissioner. The Advocate Commissioner on 13.05.2022 affixed the possession intimation notice upon the premises as secured assets. Challenging the impugned order passed by the first respondent in CrI.M.P.No.296 of 2022 under Section 14 of the SARFAESI Act, the petitioner has filed the present Writ Petition.

6.The learned counsel appearing for the first respondent Bank submitted that the petitioner has no legal right to challenge the said order. The petitioner is not a borrower from the first respondent Bank. If the petitioner has any right over the property, she is having an efficacious and alternative remedy before the appropriate forum.

7.Considering the fact that the petitioner has challenged the possession notice issued under Section 14 of the SARFAESI Act, the petitioner has to approach the appropriate forum and obtain orders, as against the second respondent, by claiming title over the property.



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8.The petitioner has filed the present Writ Petition claiming right over the property, certainly this Court will not decide the issue under Article 226 of the Constitution of India. It is for the petitioner to work out her remedy before the appropriate forum in the manner known to law. Therefore, the impugned order passed by the learned Chief Judicial Magistrate under Section 14 of the SARFAESI Act is only an administrative action and this Court cannot interfere with the said order passed by the learned Chief Judicial Magistrate. Consequently, there is no merit in the Writ Petition. If the petitioner has any right over the said property, it is for the petitioner to work out her remedy in the manner known to law.

9.With the above observations, this Writ Petition is dismissed.
No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.,J.] [R.V.,J.]
30.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

The Authorized Officer,
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Madurai – 625 514.



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D.KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

ORDER MADE IN
W.P(MD)No.10124 of 2022

DATED : 30.01.2023