



W.P.No.13773 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.13773 of 2024

R.Maheswari

.. Petitioner

v.

1. Indian Bank
represented by its Chief Manager
Chinniyampalayam Branch
1/202, Avinashi Road
Coimbatore 641 045
2. Indian Bank
represented by its Zonal Manager
1st Floor, 31, Variety Hall Road
Coimbatore 641 001
3. SBI Factors and Commercial Services Pvt.Ltd.,
1057, 4th Floor, Jaya Enclave
Avinashi Road, Coimbatore Central
Coimbatore 641 018
4. A.Ramalingam
5. R.Chandran



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6. The Sub Registrar
Madukkarai SRO
Ganthi Nagar, Madukkarai
Coimbatore 641 105

7. R.Venkatachalam
8. Shabbir Y.Imani

9. The Recovery Officer
Debts Recovery Tribunal
Coimbatore

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the 9th respondent from proceeding further in the proceedings in Recovery Proceeding (R.P.) No.08/2024 in DRC.No.08/2024 in O.A.No.199/2015 dated 18.01.2024.

For Petitioner :: Mrs.R.Pushpalatha

For Respondents :: Ms.N.Varsha for
M/s Aiyar & Dolia for R1
Mr.Arfat Mohammed.A for R3
Mr.R.Sivakumar for R7 & R8
No appearance for R2 to R4
R5-Tapal returned
R6 & R9-Service awaited

ORDER

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

This writ petition is filed for issuance of a mandamus forbearing the 9th respondent from proceeding further in the proceedings in Recovery



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Proceeding (R.P.) No.08/2024 in DRC.No.08/2024 in O.A.No.199/2015

dated 18.01.2024.

2. The petitioner states that she is the only daughter of the fourth respondent. It is the case of the petitioner that for the loan availed by the third respondent, the fourth respondent, who is her father, stood as guarantor. It is admitted that the fourth respondent has given the property as security for the loan availed by the third respondent. The respondent Bank has proceeded against the property offered by the petitioner's father towards recovery of the loan by initiating proceedings under the SARFAESI Act. It is admitted that the subject matter of this lis, had already been sold in auction. On the premise that the petitioner is entitled to a share in the joint family property of his father as co-owner, the petitioner has filed a civil suit in O.S.No.66 of 2022 on the file of District Munsif Court, Coimbatore as against the respondents 7 & 8 herein praying for an injunction restraining them and their men from interfering with the plaintiff's peaceful possession and enjoyment. The petitioner has not even prayed for partition.

3. The learned counsel appearing for petitioner would urge before this



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Court that the respondents 7 & 8 are taking emergent steps to sell the property and that the ninth respondent should be restrained from proceeding further.

4. From the affidavit filed by the petitioner, it is seen that the petitioner has not stated anything about the sale and proceedings, except the plea that she is a co-owner along with her father in respect of the subject property. The petitioner has filed this writ petition with an identical prayer as made in the suit. Earlier the respondents 7 & 8 herein have filed a writ petition in W.P.No.25414 of 2022 seeking for issuance of a mandamus directing the respondent Bank to execute and register a rectification deed in respect of the sale certificate issued to the fifth respondent dated 03.02.2016 excluding the property of respondents 7 & 8 measuring an extent of 1.26 acres situated in Malumichampatti village, Coimbatore taluk. The said writ petition was disposed of vide order dated 19.09.2023 after recording the submission of the learned counsel for respondents 1 & 2 that the Bank would take steps to execute and register the rectification deed. When the petitioner filed an application to implead her as a party, the same was



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dismissed with liberty to approach the civil Court.

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5. Having regard to the admitted position, this Court cannot entertain the present writ petition only on the same cause. The petitioner has not even filed a suit for partition, even though her prayer in the suit is for injunction against the auction purchasers. In cases like this, the petitioner has an effective, efficacious and alternative remedy of approaching the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, if she is aggrieved by recovery proceedings or before civil Court for establishing her independent right. This Court does not see any special circumstances to entertain the writ petition involving disputed questions of facts. Therefore, giving liberty to the petitioner to approach the civil Court or the Tribunal for appropriate remedy, this writ petition is dismissed. Consequently, W.M.P.No.14941 of 2023 is also dismissed. No costs.

Index : yes/no
Neutral citation : yes/no
ss
To

(S.S.S.R.,J.) (N.S.,J.)
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