



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 22930 of 2021

And

W.M.P.Nos. 24137, 24136, 24138 of 2021

And

W.M.P.No. 21139 of 2022

1. Muniyappa
2. Kempamma
3. L.Nagappa Naidu ... Petitioners

..Vs..

1. The Registrar
Co-operative Societies
Kilpauk,
Chennai – 600 010.
2. The Deputy Registrar
Co-operative Societies
Hosur Circle, Hosur
Krishnagiri District.
3. The President
Co-operative Credit Society
D.K.80, Berigai Primary Agricultural
Co-operative Credit Society
Sulagiri Road, Berigai,



Sulagiri Taluk, Krishnagiri District.

4. The Joint – Sub Registrar
Hosur, Krishnagiri District.

5. M.Sathyanarayanan

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings in CEP.No.4/2018-19 dated 12.11.2019 on the file of the second respondent and his consequential proceedings in Nee.Ma.04/2018-2019/SaPa dated 12.11.2019 and quash the same as illegal, incompetent and ultravires and consequently direct the fourth respondent to remove the order of attachment from the encumbrance certificate for the properties at S.No.140/1 to an extent of 0.60.0 Hectares, S.No. 152/1D to an extent of 1 Acre and S.No. 152/8 to an extent of 41 cents situated at Attur Village, Hosur Taluk, Krishnagiri District.

For Petitioners :: Mr. R.Jayaprakash

For RR 1, 2 & 4 :: Mr. M.Muthusamy

For 3rd Respondent :: Mr. U.Baranidharan
Additional Government Pleader

ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records relating to the proceedings dated 12.11.2019 on the file of the second respondent/the Deputy Registrar,



Co-operative Societies, Hosur Circle, Hosur Krishnagiri District, and consequent proceeding of the second respondent dated 12.11.2019 and quash the same and direct the fourth respondent / the Joint Sub Registrar, Hosur, Krishnagiri District, to remove the order of attachment from the encumbrance certificate for the properties at S.No. 140/1 measuring 0.60.0 hectares and in S.No. 152/1D measuring 1 acre and in S.No. 152/8 measuring 41 cents at Attur Village, Hosur Taluk, Krishnagiri District.

2. The fifth respondent is the son of the first and second petitioners. The third petitioner is the brother of the first petitioner. The fifth respondent had obtained loan from the third respondent/ the President, Co-operative Credit Society, Berigai Primary Agricultural at Sulagiri in Krishnagiri District and had executed a mortgage deed on 18.01.2018. A copy of the mortgage deed had been enclosed as a document along with this Petition and it is seen that it had also been registered in the office of the fourth respondent/the Joint Sub Registrar, Hosur, Krishnagiri District. At that time, the petitioners herein did not raise any objection that their property had been subjected to mortgage by the fifth respondent. They were quite happy with the amount lent by the third respondent. They must have used that amount for their family expenses. But at any rate, none of them



had thought of returning any amount. The amount multiplied and it is seen from the impugned notice that the amount due owing to the mortgage had accrued to Rs.2,90,13,698/-. Naturally, to secure the amount, an order of attachment had been made over the property which had been mortgaged. This Writ Petition has been filed questioning such attachment.

3. It is also seen that quite apart from the property which had been mortgaged the property which is now the subject matter of attachment and an additional property have also been attached. The petitioner questions the right of the respondents to attach the properties belonging to them. The petitioners cannot claim ignorance of the borrowals of the fifth respondent from the third respondent Society.

4. A Co-operative Society as the words signify, is meant for the members of the Co-operative Society and all of them either fall or survive on the determination of the outstandings of the society and the income of the society. If the fifth respondent had not repaid the mortgage amount, then every member of the society would be put to loss.



5. The learned counsel for the petitioner stated that the property of the petitioners had been subjected to attachment. But however, a perusal of Rule 135 of the Tamil Nadu Co-operative Societies Rules 1988, would imply that the petitioners can raise a claim petition. Rule 135 (1)(2)(3) of the Tamil Nadu Co-operative Societies Rules 1988 are as follows:-

“135. Investigation of claims and objections to attachment of property.

(1)Where any claim is preferred to, or any objection is made to, the attachment of any property attached under these rules on the ground that such property is not liable to such attachment, the Sale Officer shall investigate the claim or objection and dispose of it on merits:Provided that no such investigation shall be made when the Sale Officer considers that the claim or objection is frivolous.

(2)Where the property to which the claim or objection relates has been advertised for sale, the Sale Officer may postpone the sale pending the investigation of the claim or objection.

(3)Where a claim or an objection is preferred, the party, against whom an order is made by the Sale Officer, may institute a suit within six months from the date of the order to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order made by the Sale Officer shall be conclusive. ”



WEB COPY

6. If a claim or an objection is preferred, then the same should be examined and investigated by the sales Officer. If an order adverse to the petitioners is passed, the petitioners can file a civil suit as provided under the said Rule. This Court exercising jurisdiction under Article 226 of the Constitution can never interfere with aspects concerning mixed question of facts and law.

7. Though the petitioners claim innocence of the activities of the fifth respondent, it is evident that the fifth respondent, being a son of the first and second petitioners, had entered into the mortgage with the third respondent and it is only pursuant to non repayment of the mortgage amount that this attachment has been made. The petitioners are at liberty to prefer a file claim petition before the Sales Officer. The Writ Petition stands dismissed. Consequently, connected Miscellaneous Petitions stand closed. No costs.

16.12.2024

vsg
Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order



WEB COPY

To

1. The Registrar
Co-operative Societies
Kilpauk,
Chennai – 600 010.
2. The Deputy Registrar
Co-operative Societies
Hosur Circle, Hosur
Krishnagiri District.
3. The President
Co-operative Credit Society
D.K.80, Berigai Primary Agricultural
Co-operative Credit Society
Sulagiri Road, Berigai,
Sulagiri Taluk, Krishnagiri District.
4. The Joint – Sub Registrar
Hosur, Krishnagiri District.



WEB COPY



C.V.KARTHIKEYAN, J.,

vsg

W.P.No. 22930 of 2021
And
W.M.P.Nos. 24137, 24136, 24138 of 2021
And
W.M.P.No. 21139 of 2022

16.12.2024