BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.07.2024

PRONOUNCED ON : 15.10.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)Nos.1750 of 2011 & 164 of 2012
and
M.P.(MD)Nos.1 of 2011 & 1 of 2012

C.R.P.(NPD)(MD)No.1750 of 2011

1.A.Subbulakshmi
2.A.Shanmugavel Raju
3.A.Thirumalai Kumaraswamy
4.A.Chandrasekaran
5.A.Vallimayil ... Petitioners/Appellants

Vs

1.The Sale Officer/Co-operative Sub-Registrar,
Tirunelveli Central Co-operative Bank limited(Head Office),
Vannarapettai, Tirunelveli - 627 003.

2.The Deputy Registrar of Co-operative Societies,
Perumalpuram,
Tirunelveli - 627 007.

3.The General Manager,
Tirunelveli Central Cooperative Bank Limited(Head Office),
Vannarapettai,
Tirunelveli - 627 003.

4.P.Subramanian(died)
5.Nalini

6.Minor Sirambalaji
7.Minor Ajai Prameshwari
(6th & 7th respondents through their guardian and mother of the 5th respondent)

8.S.Rajathi
9.S.Annamurugan
10.S.Ramadurai(died)
11.Rajeswari

(R8 to R11 brought on record of LRs of the deceased R4 vide Court order dated 25.11.2014 made in M.P.(MD)No. 1 of 2014 in C.R.P(MD)No.1750 of 2011)

12.Vallithai
13.Sasikala
14.Minor Raju
15.Minor Maheswaran

(The Minor 14th and 15th respondents are rep. through their mother and natural guardian/13th respondent)

Respondents 12 to 15 are brought on record as LRs of the deceased 10th respondent vide Court order dated 09.06.2023 made in C.M.P(MD)No.6914 of 2021 in C.R.P(MD)No.1750 of 2011)

... Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, by setting aside the order passed in C.M.A.(C.S)No.48 of 2009 on the file of Special Appellate Tribunal/Principal District Court, Tirunelveli dated 30.06.2011, confirming the order passed in E.P.No.25/1996-1997 by Deputy Registrar of Co-operative Societies, Tirunelveli, 22.12.2008.

For Petitioner : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.R.Manimaran

For Respondents : Mr.D.Gandhiraj
Special Government Pleader
for R1 & R2
Mr.M.P.Senthil for R3
Mr.S.Kumar for R8, R9 & R11
Mr.H.Arumugam for R5 to R7
Mr.S.Balamurugan for R13 to R15
No appearance for R12

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C.R.P.(NPD)(MD)No.164 of 2012:

Tirunelveli District Central Co-operative Bank Limited,
Through its General Manager,
V.N.Bharathy,
D/o.Nallasamy,
Vannarpettai,
Tirunelveli - 627 003. ... Petitioner/Appellant/Petitioner

Vs

1.The Deputy Registrar of Cooperative Societies,
Tirunelveli and Registrar of the District,
Tirunelveli, Perumalpuram,
Tirunelveli - 627 007.

2.The Sale Officer,
Cooperative Societies,
Sub-Registrar,
Execution and Liquidation,
Authorised Sale Officer,
Tirunelveli District Central Co-operative Bank,
Vannaparpettai, Tirunelveli - 3.

Now office at:
The Sale Officer,
Deputy Registrar Co-operative Societies Office,
Tirunelveli, Perumalpuram,
Tirunelveli - 627 007.

3.The Sub Registrar,
Sankarankovil,
Tirunelveli District.

4.Subbulakshmi
5.Shanmugavelraj
6.Thirumalaikumarasamy
7.Chandrasekaran
8.Vallimayil
9.Subramanian (died)
10.S.Rajathi
11.S.Anna Murugan
12.S.Ramadurai (died)
13.Rajeswari

(RR10 to 13 are brought on record as LRs of deceased R9, vide Court order dated 26.08.2019 made in M.P.(MD)Nos.1 to 3 of 2014 in C.R.P(MD)No.164 of 2012)

14.Vallithai
15.Sasikala
16.Minor Raju
17.Minor Maheswaran

(16th and 17th Respondents are minors represented by their mother/ guardian the 15th respondent)

(Respondents 14 to 17 are brought on record as LRs of the deceased 12th respondent vide Court order, dated 07.09.2023, made in C.M.P(MD)Nos.8590 to 8592 of 2023 in C.R.P(MD)No.164 of 2012)

... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, as against the judgment and decree dated 30.06.2011 passed in C.M.A.(CS)No.37 of 2009 of 2009 on the file of learned Principal District Judge (Co-operative Tribunal), Tirunelveli confirming the sale proceedings conducted by the 2nd respondent on 22.12.2008 in E.P.No.25/1996-1997 on the fie of the first respondent and subsequent confirmation of sale on 15.06.2009 by the first respondent.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.R.Manimaran for R4 to R8
Mr.D.Gandhiraj
Special Government Pleader
for R1 to R3
Mr.S.Kumar for R10, R11, R13 & R14
No appearance for R15

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COMMON ORDER

These revision petitions have been filed challenging the order passed by the Co-operative Tribunal, Tirunelveli in C.M.A.(C.S)Nos.48 of 2009 and 37 of 2009, dated 22.12.2008, by way of two separate orders.

(A).The facts which are not in dispute are as follows:

2.One S.Arumugam had borrowed a loan from District Central Cooperative Bank, Tirunelveli to a tune of Rs.6,91,000/-. Due to default in payment, the Deputy Registrar of the Co-operative Society had initiated proceedings and an award came to be passed on 30.09.1995 for a sum of Rs.8,93,745/- in A.R.C.No.91/1995-1996. For realisation of the said award amount, execution proceedings were initiated under Section 143 of the Tamil Nadu Co-operative Societies Act by the Co-operative Sub Registrar in

E.P.No.25/1995-1996. In the execution proceedings, two properties were sold on 22.12.2008 to one Subramanian and the same was confirmed on 15.06.2009. Challenging the same as well as the confirmation, the creditor namely the Bank had filed C.M.A.(C.S)No.37 of 2009, the legal heirs of the judgment debtor had filed C.M.A.(C.S)No.48 of 2009 before the Co-operative Tribunal, Tirunelveli. The tribunal by way of common order dated 30.06.2011 had dismissed both the appeals confirming the order of the Sale Officer. Challenging the said order, the appellants in both the appeals had filed the above said revision petitions.

(**B).Contentions of the counsel appearing on either side are as follows:-**

3.The learned Counsel appearing for the revision petitioners have contended that the judgment debtor had passed away prior to the date of auction, without putting the legal heirs on notice, the auction was conducted and therefore, the auction is null and void;

4.No proper advertisement was given for conducting the public auction and therefore, the sale is liable to be set aside;

5.The sale should have been conducted within the place, where the property is located. However, the sale was conducted in a different place and therefore, the auction has to be set aside;

6.The total value of the property is more than Rs.30,00,000/-. Auctioning a portion of the property would have satisfied the entire award amount.

However, without considering the said aspect, the entire property was sold and hence, the auction is liable to be set aside on the ground of excessive execution;

7.The valuation of the property was not ascertained from the appropriate authorities before publishing the auction notice. There are no records to indicate the value of the first item or the value for which it was sold. Both the properties have been sold for a value of Rs.15.40/- lakhs. After the sale was completed, several irregularities were pointed out by the District Registrar. However, without considering the irregularities, the Sale Officer has proceeded to confirm the sale. Only two bidders have participated in the auction and therefore, there are no sufficient participants. The auctioneers have colluded among themselves and the bid was accepted for a lessor amount incurring loss to the creditor as well as the judgment debtor. Hence, the creditor as well as the judgment debtor have prayed for setting aside the sale and the confirmation of sale and to revise the order passed by the Co-operative tribunal.

8.Per contra, the learned Special Government Pleader appearing for the Sale Officer had contended that

i) the legal heirs of the deceased borrower have produced two death certificates, which are contradictory to each other and therefore, the Co-operative tribunal was right in rejecting those documents and has arrived at a findings that the borrower has not established the fact that the borrower had passed away prior to the date of auction;

ii)He further contended that proper advertisement was given for conducting the public auction and thereafter, the auction was conducted and the bid was awarded to the highest bidder. All the queries raised by the Deputy Registrar were properly answered by the Sale Officer. Only thereafter, the sale was confirmed and the sale certificate was issued. When the value of the property has been properly ascertained and proper procedure has been followed for conducting the sale, the said sale cannot be set aside.

9.The learned Counsel appearing for the auction purchaser had contended that the appeal filed by the creditor bank and the legal heirs of the deceased borrower before the Co-operative tribunal are not maintainable. They should have invoked Rule 128 of the Tamil Nadu Co-operative Societies Rules. The learned Counsel appearing for the auction purchaser has also relied upon the judgments in the case of ***P.M.Abubakar Vs. State of Karnataka and others*** reported in 2017 (1) SCC 302, ***Deenadayal Nagari Sahakari Bank Limited & Another Vs. Munjaji and others*** reported in ***2022 LiveLaw (SC) 183***, ***Chilamkurti Bala Subrahmanyam Vs. Samanthapudi Vijaya Lakshmi and another*** reported in ***2017 (6) SCC 770*** and ***K.Kumara Gupta Vs. Sri Markendaya and Sri Omkareswara Swamy Temple and others*** reported in ***2022 (5) SCC 710*** to impress upon the Court that the appeal as well as the revision filed by the Bank and the legal heirs of the judgment debtor are not maintainable and there are no merits in the revision petitions.

10.I have carefully considered the submission made on either side and perused the materials available on records.

(C)Discussion:

11.In the present case, the sale proclamation has been issued in a newspaper fixing the date of public auction as 22.12.2008. A perusal of the said auction notice reveals that the name of the judgment debtor is mentioned as S.Arumugam and the place of auction is mentioned as Head Office, Tirunelveli District Central Co-operative Bank, Vannarapettai, Tirunelveli.

12.As per Rule 126(2)(e)(i) of the Tamil Nadu Co-operative Societies Rules, proclamation of sale shall be published by affixing a notice in the office of the Registrar and taluk office at least thirty days before the date fixed for the sale and also by beat of drum in the village on two consecutive days previous to the date of sale and on the date of sale prior to the commencement of the sale.

13.As per Rule 126(1)(g)(iv), the time and place of sale shall be fixed by the Registrar and the place of sale shall be the village, where the property to be sold is situated or such adjoining prominent place of public resort as may be fixed by the Registrar. As per Sub Rule (h), the sale officer may sell the whole or any portion of the immovable property of a judgment-debtor. It further declares that only that portion of the property which is sufficient to discharge the amount shall be sold and no larger portion shall be sold.

14.A perusal of the Rule 118 reveals that where a judgment-debtor dies before the decree has been fully satisfied, an application under Rule 116(1) shall be made as against the legal representative of the deceased judgment-debtor and there upon all the provisions of these rules shall apply. A perusal of the above said rule further reveals that the legal representatives shall be liable only to the extent of the property of the deceased judgment-debtor which has come into the hands of the legal heirs.

15.A combined reading of the above said rule reveals that, in case, if the judgment-debtor has passed away prior to the satisfaction of the decree amount, a fresh application has to be filed under Rule 116 of the above said rule to initiate the execution proceedings as against the legal heirs of the judgment-debtor.

16.In the present case, according to the petitioner, the judgment debtor has passed away on 28.10.2008 and he had produced a photocopy of the death certificate before the Co-operative tribunal. The tribunal entertaining doubt over the said death certificate had directed the legal heirs to produce the original death certificate. Though the original indicated the date of his death as 28.10.2008, it was rejected by the tribunal on the ground that the serial number in the photocopy as well as in the original did not tally. The legal heirs have also produced the legal heir certificate which discloses the date of death of Arumugam as 28.10.2008. In view of the above said reasons, the tribunal has rejected the death certificate as well as the legal heir certificate and proceeded to hold that the legal heirs have not proved that the borrower had passed away prior to the date of public auction.

17.The tribunal was right in insisting upon the production of original death certificate of the deceased borrower. Once the original death certificate is produced and the same also reveals the date of death as 28.10.2008, the said document ought not to have been rejected by the tribunal, citing that the xerox copy already produced did not tally. That apart, the legal heirs have also produced the legal heir certificate which reflected the date of death as

28.10.2008. Further, it is not the case of the sale officer or the auction purchaser that the deceased borrower was alive on the date of the public auction. Considering the fact that the borrower had passed away on 28.10.2008 and one month thereafter, the sale notice has been issued on 18.11.2008. This Court is of the considered opinion that in view of Rule 118 r/w. 116, a fresh auction notice ought to have been issued in the name of the legal heirs. A perusal of the clause 38 of the public auction notice reveals as if defaulter is alive after the issuance of proclamation. In the said circumstances, it is clear that the auction notice has been issued as against the dead borrower and the same is not legally sustainable.

18.As per rule 126, the sale has to be conducted in the same village or any adjoining prominent place of public resort. Admittedly, both the properties are located in Sankarankovil Town. Instead of conducting the auction in the Taluk Office of Sankarankovil, the auction has been fixed at Head Office of the Bank namely at Tirunelveli, which is in clear violation of Rule 126 of the Tamil Nadu Co-operative Societies Rules.

19.A perusal of the public auction notice, dated 18.11.2008 does not manifest the amount for recovery for which sale is ordered and which is clearly in violation of Rule 126(e)(iv) of the Tamil Nadu Co-operative Societies Rules.

20.The sale has been conducted on 22.12.2008 and the highest bidder has quoted a sum of Rs.15,40,000/-. The sale has been confirmed on 15.06.2009. After the sale was conducted, it was sent for the opinion of the Deputy Registrar. On 30.03.2009, the proposal sent by the sale officer was returned by the Deputy Registrar citing various objections to the conduct of the sale. A reply was sent by the Sale Officer. Thereafter, the sale was confirmed by the Deputy Registrar on 15.06.2009. However, there are no records to indicate how the defects pointed out by the Deputy Registrar were rectified by the Sale Officer after the conduct of sale.

21.After the sale was confirmed on 15.06.2009, the General Manager of the Co-operative Bank has addressed a communication to the Tashildar, Sankarankovil in July 2009, seeking correct valuation of the properties that were already sold. By way of communication dated 06.07.2009, the Tashildar Sankarankovil had stated that the value of the building is Rs.27,00,000/-. It could be seen from the schedule of properties to the auction notice that the building is located only in second item and not in the first item. Therefore, a doubt arises to the effect how both the properties were sold for Rs.15,40,000/-, when the value of one of the properties itself is mentioned as Rs.27,00,000/- by the Tashildar, Sankarankovil.

22.The tribunal had rejected the contentions of the borrower that the auction was conducted after the death of the borrower by rejecting the original death certificate as well as the legal heirs certificate. The tribunal has not properly considered the communication of the Tashildar, Sankarankovil on 06.07.2009 that the value of the one of the properties itself is more than Rs.27,00,000/-.

23.Normally, the judgment-debtor or his legal heirs used to challenge the auction on various grounds and attempt to bring the property for auction once again, so that they could pay the award amount in the meantime. But, in the present case, the Central Co-operative Bank, Tirunelveli, who is the creditor has also raised various objections with regard to the manner in which the sale was conducted by the Sale Officer of the Co-operative Department. The Co-operative bank/creditor had questioned the non-mentioning of award amount in the auction notice, non-issuance of proper advertisement, conduct of the sale in a different place where the properties located, the undervaluation of the property, the confirmation of sale by the Deputy Registrar of the Co-operative Societies, without rectification of the objections raised by him. Therefore, it is clear, as pointed out in the preceding paragraphs, several rules of the Tamil Nadu Co-operative Societies Rules have been violated in issuing the auction notice against the dead person, without mentioning the award amount and conducting the sale in a place different from that of the place, where the property is located. The Tashildar of the concerned Taluk had certified that the value of one of the properties is around Rs.27,00,000/-. But the two properties have been sold for a sum of Rs.15,40,000/-. This has caused great prejudice to the creditor bank also, who are seeking to recover the award amount along with interest.

24.In view of the above said deliberations, the sale held on 22.12.2008 and the confirmation order dated 15.06.2009 are hereby set aside. Both the revision petitions stand allowed setting aside the order of the Co-operative tribunal in C.M.A.(C.S.)Nos.37 of 2009 and 48 of 2009 on the file of the Principal District Judge/Cooperative tribunal, Tirunelveli. The Central Co-operative Bank/creditor is at liberty to bring the property for fresh auction for realising the award amount in A.R.C.No.91/1995-1996.

25.Both the revision petitions stand allowed with the above said observations. No costs. Consequently connected miscellaneous petitions are also closed.

15.10.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
RJR

To

1.The Sale Officer/Co-operative Sub-Registrar,
Tirunelveli Central Co-operative Bank limited(Head Office),
Vannarapettai, Tirunelveli - 627 003.

2.The Deputy Registrar of Co-operative Societies,
Perumalpuram,
Tirunelveli - 627 007.

R.VIJAYAKUMAR, J.

RJR

Pre-delivery order
made in
**C.R.P.(NPD)(MD)Nos.1750 of 2011 &
164 of 2012**

15.10.2024