

Subhadramma Vs. Authorised officer

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Court : Kerala

Decided On : Nov-17-2014

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : Subhadramma

Respondent : Authorised officer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON MONDAY,THE17H DAY OF NOVEMBER201426TH KARTHIKA, 1936 WP(C).No. 13685 of 2011 (I)

----- PETITIONER(S) : ----- 1. SUBHADRAMMA, SUJITH VILASOM, KULANJI, AMBALAM MUKKU, ELAMAD.P.O., ELAMAD VILLAGE, KOTTARAKKARA TALUK, KOLLAM.

2. SUJITH KRISHNAN, SUJITH VILASOM, KULANJI, AMBALAM MUKKU, ELAMAD.P.O., ELAMAD VILLAGE, KOTTARAKKARA TALUK, KOLLAM. BY ADV. SRI.K.SUBASH CHANDRA BOSE RESPONDENT(S): -----

1. AUTHORISED OFFICER, CENTRAL BANK OF INDIA, REGIONAL OFFICE, GOPAL BUILDING, THYVILLA AROAD, THAMPANNOOR, THIRUVANANTHAPURAM- 695 001.

2. THE BRANCH MANAGER, CENTRAL BANK OF INDIA, AYOOR BRANCH, KOTTARAKKARA, KOLLAM- 691 712.

3. SMT. GRACE JOHN PANICKER, GRACE VILLA, AYOOR.P.O., KOLLAM- 691 539. * ADDITIONAL R4 IMPEADED4 MR.MAHESH, THOTTATHIL VEEDU, KATTADI P.O, OYOOR, KOLLAM. ** (CORRECTED) * IS IMPEADED AS ADDITIONAL4H RESPONDENT AS PER

ORDER

DATED2710.2011 IN I.A.NO.16875/2011 ** THE NAME OF ADDITIONAL R4 MAHESH IS CORRECTED AS MANESH AS PER

ORDER

DATED1611.2011 IN I.A.NO.17993/2011. R1 & R2 BY ADVS. SRI.DEVAN RAMACHANDRAN SRI.K.M.ANEESH SRI.S.NIKHIL SANKAR R4 BY ADV. SRI.B.MOHANLAL THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON1711-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Msd. WP(C).No. 13685 of 2011 (I) APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1: TRUE COPY OF THE SALE DEED NO.2299 EXECUTED ON0312.1984 IN FAVOUR OF THE1T PETITIONER AND HER HUSBAND. EXHIBIT P2: TRUE COPY OF THE SALE DEED NO.1538 EXECUTED ON1308.1997 IN FAVOUR OF THE2D PETITIONER AND SRI.RENJITH. EXHIBIT P3: TRUE COPY OF THE SALE DEED NO.1954 EXECUTED ON1112.2002 IN FAVOUR OF MURALEEDHARAN PILLAI. EXHIBIT P4: TRUE COPY OF THE SALE DEED NO.1133 EXECUTED ON2307.2003 IN FAVOUR OF THE3D RESPONDENT. EXHIBIT P5: TRUE COPY OF THE FIR NO.829 DATED1011.2009 SUB DIVISIONAL MAGISTRATE COURT, KOLLAM. EXHIBIT P6: TRUE COPY OF THE ELECTRICITY RECEIPTS DATED0206.2010 AND0202.2011 ISSUED IN THE NAME OF THE1T PETITIONER. EXHIBIT P7: TRUE COPY OF THE BUILDING TAX RECEIPT DATED0405.2011. EXHIBIT P8: TRUE COPY OF THE SALE NOTICE DATED2504.2011 PUBLISHED IN MALAYALA MANORAMA DAILY DATED2604.2011. RESPONDENT(S)' EXHIBITS ----- EXHIBIT R4(A): THE TRUE COPY OF THE NOTICE NO.TRO.RECV.2011-12.108 DATED2805.2011 ISSUED BY THE1T RESPONDENT. //TRUE COPY// P.A.TO JUDGE. Msd. P.R. RAMACHANDRA MENON, J.

JUDGMENT

The petitioners have approached this Court with the following prayers: "i. Call for the records leading to Exhibit P8 and quash the same by issuing a writ in the nature of certiorari or any other appropriate writ, direction or order. ii. To issue a writ in the nature of mandamus or any other appropriate writ, direction or order directing respondents 1 and 2 to permit the petitioners to settle amount under the One Time Settlement Scheme and to direct respondents 1 and 2 return all the documents of the property to the petitioners on settlement. iii. To direct the 3rd respondent to reimburse the petitioners the excess amount if any paid on settlement of the account with the bank over and above the amount due from the petitioners to 3rd respondent." 2. The grievance of the petitioners is that, the property belonging to the petitioners has been put on sale as per Ext.P8 notice dated 25.04.2011 for a paltry amount, in spite of the fact that the property ought not to have been proceeded against, as the same came to be offered as security before the respondent Bank at the instance of the third respondent, under a different circumstance and without revealing the full set of facts and figures. W.P.C. No. 13685 of 2011 -2- 3. The case of the petitioner is that, in view of some urgent requirement for financial assistance, the property belonging to the petitioners was sold to one Mr. Muraleedharan as per Ext.P3 sale deed. Later, when the amount was demanded to be returned, there was no alternative and as such, the property was caused to be sold to the 3rd respondent as per Ext.P4 dated 23.7.2003. Subsequently, the third respondent created security rights over the same and availed some financial assistance from the Bank. Later, third respondent turned to be a defaulter when the respondent Bank proceeded with steps under the SARFAESI Act issuing Ext.P8 notice, which made the petitioner to approach this Court by filing this writ petition.

4. A detailed counter affidavit has been filed on behalf of respondents 1 and 2 disputing the version of the petitioner. It is brought to the notice of this Court that, the property came to be sold in the name of the additional 4th respondent, who satisfied a sum of 2,50 lakhs towards 25% of sale consideration, inclusive of the

EMD. Confirmation of the sale was intercepted by this Court, subject to satisfaction of a sum of 1.50 lakh by the petitioner as per the interim order dated 23.5.2011, which is stated as complied with. The learned counsel appearing for the W.P.C. No. 13685 of 2011 -3- additional 4th respondent submits that the said respondent is no more interested with the sale because of the delay involved and hence wants the amount to be returned by the respondent Bank.

5. The learned counsel for the Bank submits that the petitioners are total strangers in so far as the Bank is concerned. Admittedly, the property was conveyed by the petitioners to a person by name Muraleedharan, who later transferred it to the third respondent as per Exts. P3 and P4 sale deeds respectively. It was on the basis of the clear title on the part of the third respondent that the property was accepted as security and the loan was extended to the third respondent. Since there was default in satisfying the due amount, the Bank rightly proceeded against the property and said proceedings are not assailable under any circumstances. The fact remains that the title of the petitioners herein over the property concerned came to be passed on to a different person (Mr. Muraleedharan Pillai) and thereafter to the third respondent as per Exts. P3 and P4 sale deeds. In so far as the said conveyances stand, this Court is not in a position to extend any relief to the petitioners.

6. The learned counsel for the petitioners submits that the petitioners are ready to satisfy the entire liability to the W.P.C. No. 13685 of 2011 -4- respondent Bank if some breathing time is given, in view of the turn of events and more so when, the additional fourth respondent submits that he is no more interested in the sale which took place pursuant to Ext.P8. It will be open for the parties to work out their remedy to have the issue settled once and for all by appropriate means and measures. Since the reliefs sought for are not liable to be granted by this Court, interference is declined and the writ petition is dismissed, without prejudice to the rights and liberties of the parties as above.

7. In view of the fact that the petitioners have already satisfied a sum of 1.50 lakhs pursuant to the interim order passed by this Court, the said payment shall also be given credit to, in the course of further proceedings to be finalized so as to settle

the grievance of all concerned. It is made clear that this Court does not intend to express anything with regard to the merits involved. P.R. RAMACHANDRA MENON, JUDGE. kp/-

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