



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 7TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

REGULAR FIRST APPEAL NO. 100304 OF 2020

BETWEEN:

SMT.UPPALAPATI GANGABHAVANI,
W/O LATE U.ADINARAYAN RAO,
AGE: 74 YEARS, OCC: AGRICULTURIST,
R/O: SRIRAMANAGAR, TQ: GANGAVATHI,
DIST: KOPPAL-583231.

...APPELLANT

(BY SRI VINAY S.KOUJALAGI, ADVOCATE)

AND:

1. SMT. Y. JAYAPRADA,
W/O. LEELAPRASAD,
AGE: 61 YEARS, OCC: HOUSEHOLD,
R/O: VICTORY HOUSE WARD NO.29,
RAJIV NAGAR, HOSPET,
TQ: HOSPET,
DIST: BALLARI-583201.
2. P. VENKATAKRISHNA,
S/O. P. SATYANARAYANA,
AGE: 30 YEARS, OCC: AGRICULTURIST,
R/O: H.S. NO:164/2, BLOCK NO.1
SRIRAMANAGAR-2,
TQ: GANGAVATI,
DIST: KOPPAL-583227.



3. D. SATYANARAYANARAJU,
S/O. SURYANARAYANARAJU,
AGE: 42 YEARS, OCC: AGRICULTURIST,
R/O: KESAKKI HANCHINAL
TQ: GANGAVATI, DIST: KOPPAL-583227.
4. C. DURGA RAO S/O. LACHCHAYYA,
AGE: 42 YEARS, OCC: AGRICULTURIST,
R/O: BARGUR CAMP,
TQ: GANGAVATI,
DIST: KOPPAL-583227.
5. SOUTH INDIAN BANK LIMITED,
REP.BY AUTHORIZED OFFICER,
SRI. T.P. OUSEPH,
S/O. T.M. PORINCHU,
REGIONAL OFFICE, MUMBAI,
MAHARASHTRA STATE-400001.

...RESPONDENTS

THIS RFA IS FILED UNDER ORDER 41 RULE 1 R/W. SECTION 96 OF CPC., PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 09-10-2013 IN ALLOWING I.A. NO. V FILED BY THE RESPONDENT NO. 2 TO 5 IN O.S. NO.48/2012 ON THE FILE OF THE SENIOR CIVIL JUDGE COURT GANGAVATHI AND RESTORE THE SUIT ON ITS FILE BY REJECTING THE I.A.NO.V, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

The plaintiff has preferred this appeal challenging the order passed by the Senior Civil Judge, Gangavathi, rejecting the plaint in O.S.No.48/2012 exercising power under Order VII Rule 11(d) of the Code of Civil Procedure.

2. The plaintiff claimed the following reliefs:

- (i) *That the illegal map prepared by the defendant No.1 in sy.no. 89/B in respect of her alleged share and measurement of plots shown is not binding on the plaintiff.*
- (ii) *The measurement of the plots shown in sale certificate dated 29-12-2011 bearing document No. 4931/11-12 executed by the defendant No.5 in favour of defendant No.2 to 4 on the basis of the fabricated map are not binding on the plaintiff.*
- (iii) *Perpetual injunction restraining the defendants, their men, agents interfering with the peaceful possession and enjoyment of the plaintiff over her share in sy.no.89/B including the enjoyment of 21 feet width road situated in between the share of the plaintiff and defendant No.1 and also 7 ½ feet road totally measuring 15' towards the west of defendant No.1's share left by the propositors of the plaintiff and defendant No.1 with Byadagi Basappa.*
- (iv) *Such other decree for which the plaintiff deemed fit under the future circumstances of the case in the interest of justice and equity.*



3. The pleaded facts show that plaintiff is the mother of 1st defendant. It appears that 1st defendant borrowed money from defendant No.5 and when she defaulted to repay, the 5th defendant initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short, 'SARFAESI Act'). Ultimately the mortgaged property was sold to defendants No.2 to 4 for a sum of Rs.1,12,55,555/- and in this connection sale certificate was issued on 29.11.2011. It is stated that defendants No.2 to 4 with the help of defendant No.1 tried to encroach upon 21 feet width road situated between the property of the plaintiff and the property of 1st defendant and also another road measuring 15 feet in width situated towards the west of the property of defendant No.1 in Sy.No.89/B of Sriramanagar village. She stated that on account of this interference, she suffered loss to her property because the layout said to have been formed by defendant No.1 was illegal. There is also allegation that defendant No.1 had not deducted 10278 sq.ft. of space sold by one U.Adinarayana Rao, the husband of the plaintiff and



father of defendant No.1 and that defendant No.1 could not have formed a layout consisting of plots measuring 60 ft. X 60 ft. without deducting the space required for internal roads.

4. The Trial Court observed that the plaintiff did not challenge the map when she stated that the map of the layout was illegal and did not bind her interest. Therefore the Trial Court is of the opinion that indirectly the plaintiff challenged sale certificate issued by bank by twisting the facts with a confused state of mind. In this view the provisions of SARFAESI Act can be invoked to state that the Civil Court has no jurisdiction and only remedy available to the plaintiff was to approach the Debt Recovery Tribunal under Section 17 of the SARFAESI Act.

5. We have heard Sri Vinay S.Koujalagi, learned counsel for the appellant. His submission is that the Trial Court should not have rejected the plaint under Order VII Rule 11(d) of CPC inasmuch the plaintiff does not dispute the auction held by the bank and infact she was in no way concerned with the auction because her daughter i.e.



defendant No.1 borrowed money from 5th defendant-bank and when she defaulted in repayment, 5th defendant had to take recourse to law. About this action, the plaintiff has no grievance. He submits that the main purpose of filing the suit was that the 1st defendant tried to change the layout by forming plots in the road situate in between the plaintiff's property and the 1st defendant's property. The plaintiff wanted that the road should be maintained and for this reason she approached the Civil Court for preservation of the road.

6. If we consider the submission of Sri Vinay S.Koujalagi now and compare the same with the plaintiff averments, we find that the plaintiff actually wants to frustrate the auction sale in the guise of challenging the layout plan. If according to her, the layout was illegal and that the roads were converted into plots, she could have approached the competent authority under Karnataka Town and Country Planning Act with a complaint that the layout had been formed illegally and that the roads left therein were converted into plots. This is a matter to be decided by the



concerned authorities under the special law. Civil Court cannot decide such aspects. In para 10 of the plaint it is stated that defendants No.2 to 4 made an attempt to lay their hands on the property of the plaintiff by totally blocking the eastern and western side of the road though they had no rights at all. They tried to interfere on the basis of fabricated map and the sale certificate. All that we can opine is that it is a clever drafting to defeat the sale certificate issued by bank pursuant to auction held according to SARFAESI Act.

7. If the grievance of the plaintiff was with respect to interference by defendants No.1 to 4 illegally, there was no need to make bank a party to the suit. Although Sri Vinay S.Koujalagi submits that the plaintiff has no objection for the auction sale, that submission cannot be accepted for the reason that the bank was to be made a party to the suit because the sale certificate was also illegal according to the plaintiff. What we find is clear intention of the plaintiff to defeat the auction. Therefore exercise of jurisdiction under Order VII Rule 11(d) of CPC by the Trial Court is proper and



justifiable. We don't find any ground to admit this appeal.
Hence, appeal is rejected.

Liberty is given to the plaintiff to approach the appropriate authority for redressal of her grievance with regard to layout. All pending I.As. are disposed of.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE**