



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE UMESH M ADIGA

REGULAR SECOND APPEAL NO. 2632 OF 2011 (DEC/INJ)

BETWEEN:

SMT. RADHA
W/O LATE. GUNDAPPA SASTRY,
AGED ABOUT 57 YEARS,
R/A NO.883, 4TH 'T' BLOCK
19TH MAIN, JAYANAGAR
BENGALURU-560 41.
DEAD BY HER LRS.

A) SMT. G ANITHA
W/O VINAY
MAJOR IN AGE,
R.AT NO.19/3, 18TH MAIN,
'3RD 'A' CROSS,
BTM LAYOUT, 2ND STAGE,
BANGALORE- 560 076.

B) SMT. SAVITHA G,
S/O SRINIVAS
MAJOR IN AGE,
R/AT NO.67/41,
14TH CROSS, 11TH MAIN
PADMANABHANAGARA,
BANGALORE- 560 070.

C) SRI. KAVITHA
W/O VENKTESH MURTHY
MAJOR IN AGE
R/AT NO.206, 9TH MAIN
ARKERE, MICO LAYOUT
BANGALORE- 560 076.

...APPELLANTS

(BY SRI.RAVISHANKAR S. AND
SRI.YOGESH B. POOJARI, ADVOCATES)



AND:

- 1 . SRI. D. RAMAMURTHY
S/O DORASWAMY NAIDU,
MAJOR,
R/A NO.28, A.G.B LAYOUT
MAHALKSHMIPURAM,
BENGALURU- 560 086.
- 2 . THE INDIAN BANK
OVERSEAS BRANCH,
ST.MARKS ROAD,
BANGALORE
REP.BY ITS MANAGER.
3. MR. RAMANJANEYA
AGED ABOUT 44 YEARS
S/O CHINNAPPA,
RESIDING AT NO.69,
KUMBHENA AGRAHARA
KADUGODI POST,
BANGALORE.
4. SRI.H.M.VIJAYAKUMAR,
AGED ABOUT 43 YEARS
S/O H.M.VENKATARAMAYYA,
RESIDING AT 2ND CROSS,
T.G. EXTENSION
HOSAKOTE,
BANGALORE.
5. ASSET RECONSTRUCTION COMPANY
(INDIA)LTD.,
(ALSO IN ITS CAPACITY AS TRUSTEE
OF THE ARCIL-RETAIL
LOAN PORTFOLIO-004-E-TRUST)
THE RUBY, 10TH FLOOR, 29,
SENPATHI BAPAT MARG,
DADAR(WEST),
MUMBAI- 400 028.



REPRESENTED BY ITS GPA HOLDER
MR.HARISH KUMAR G,
BANGALORE.

...RESPONDENTS

(BY SRI. SREEVATSA, LEARNED SENIOR COUNSEL FOR
SRI. ADITYA BHAT, ADVOCATE FOR R2 AND R5,
SRI. G .KRISHNAMURTHY LEARNED SENIOR COUNSEL
FOR SRI.R. BHADRINATH, ADVOCATE FOR R3,
SRI. MOHAMMED AKHIL AND MATEEN KHAN, ADVOCATES
FOR R4,
VIDE ORDER DATED 16/07/2012, NOTICE TO R1 IS
DISPENSED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED 19.10.2011
PASSED IN R.A.NO.37/2011 ON THE FILE OF THE II ADDL.
DISTRICT JUDGE AND IN CHARGE JUDGE, FAST TRACK COURT-I,
BANGALORE RURAL DISTRICT, BANGALORE, DISMISSING THE
APPEAL AND CONFIRMING THE JUDGMENT AND DECREE
DATED 2.11.2010 PASSED IN O.S.NO.381/2000 ON THE FILE OF
THE II ADDL. SR. CIVIL JUDGE, BANGALORE RURAL DISTRICT,
BANGALORE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 03.11.2025, COMING ON FOR PRONOUNCEMENT
THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE UMESH M ADIGA



CAV JUDGMENT

This Regular Second Appeal has been filed by the plaintiff under Section 100 of CPC, challenging the judgment and decree dated 19th October 2011, passed in R.A.No.37/2011, on the file of II Addl.District Judge and In-charge Judge, Fast Track Court-1, Bengaluru Rural District, Bengaluru, (for short, `first Appellate Court'), which arose from the judgment and decree dated 2<sup>nd</sup> November 2010, passed by the II Addl.Senior Civil Judge, Bengaluru Rural District, Bengaluru, (for short, `trial Court'), in O.S.No.381/2000.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The brief facts of the case are that : the plaintiff had filed a suit for the relief of declaration and permanent injunction with the following averments:

That the suit property was earlier belonging to one Gopal Rao. He sold the suit property in favour of one



Keshavamurthy by the Sale Deed dated 13.04.1981 (Ex.D-2), which was registered on 14.07.1981. The said Keshavamurthy executed a general Power of Attorney dated 22.11.1992 in favour of one K.Mariyappa (Ex.D-3). The said Mariyappa sold the property to defendant No.1 - D.Ramamurthy under registered Sale Deed on the basis of Power of Attorney executed by Keshavamurthy. The said Ramamurthy mortgaged the suit property in favour of defendant No.2-Bank by creating equitable mortgage as he stood surety to one of the borrower. The Bank filed O.A.No.424/1998, before the Debt Recovery Tribunal, Bengaluru (for short, 'DRT') and obtained an order for sale of the suit schedule property to recover the outstanding amount.

4. It is the further case of the plaintiff that, Keshavamurthy executed a registered Sale Deed dated 06.04.1993 (Ex.P-2) in favour of husband of plaintiff by name Gundappa Shastry. The said Gundappa Shastry was put in possession of the property. The defendant No.1 -



Ramamurthy, who had purchased the suit property from Mariyappa - Power of Attorney Holder of Keshavamurthy, filed a suit in O.S.No.106/1993 against Keshavamurthy, Gundappa Shastry and Mariyappa, on the file of Prl.Civil Judge, Bengaluru Rural District. It appears, Gundappa Shastry, who was one of the defendants, made a counter claim for the relief of declaration, to declare him as the absolute owner of the suit schedule property. The said suit was compromised and parties to the said suit agreed to declare Gundappa Shastry as the absolute owner of the property and the said suit was decreed in terms of compromise.

5. It is the further case of the plaintiff that on 22.10.1999, when plaintiff visited the suit property, she found that officers of the 2nd defendant-bank were inspecting the suit property. On enquiry, she came to know about the mortgage of the suit property by defendant No.1 in favour of defendant No.2-bank, offering the suit property as security to the loan obtained from



defendant No.2-bank. They also informed that Bank had obtained a decree in O.A.No.424/1998 for auctioning the suit property to recover its outstanding amount. With these reasons, plaintiff prayed for the following reliefs :

"(i) for a declaration, declaring that the plaintiff who is the legal representative and successor in interest of late Gundappa Sastry being his wife is the absolute owner in physical possession of the schedule property exercising the rights of ownership as the absolute owner thereof and;

(ii) for a permanent, perpetual injunction restraining the 2nd defendant from bringing any action for the sale of the schedule property by the 2nd defendant or take any proceedings for the sale of the schedule property on the basis of the alleged decree obtained in O.A.No.424/1998 on the file of the Debt Recovery Tribunal, Bengaluru, for the realization of the certificate amount and for costs of the suit and for such other reliefs this Hon'ble Court deems fit to grant under the circumstances of the case, in the interest of justice."

6. Before the trial Court, the defendant No.1 remained *ex parte*. The defendant No.2-Bank contended



that, it was not aware about the decree passed in O.S.No.106/1993; one M/s.Aqua Team had obtained loan from 2nd defendant-Bank and defendant No.1 - Ramamurthy stood as a guarantor to the said loan; He offered the suit schedule property as a security for the said loan; Defendant No.1 created an equitable mortgage by depositing the title deeds as per Section 58 of Transfer of Property Act, 1882; He had sworn to an affidavit dated 21.10.1994, declaring that he was the absolute owner and in possession of the suit schedule property and others have no right over the same; The revenue records were also standing in his name and he was in possession of the original Sale Deed executed by Mariyappa as a Power of Attorney Holder of the owner - Keshavamurthy. The Bank had *bona fide* accepted his suretyship.

7. The Bank further contended that, borrower, as well as surety did not repay the loan amount, therefore, they initiated the proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and



Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act') and filed an application before the DRT in O.A.No.424/1998 and obtained an award from the DRT. It is further stated that, plaintiff has no right over the suit property and hence, prayed to dismiss the suit.

8. From the rival contentions of the parties, the trial Court framed following issues :

(1) Whether the plaintiff proves that after the death of her husband, plaintiff and her daughter became absolute owner of the suit land by virtue of the registered sale deed dated 6.4.1993 executed by Keshava Murthy in favour of her husband?

(2) Whether the plaintiff proves that herself and her daughter are in lawful possession of the suit property?

(3) Whether the plaintiff proves that 2nd defendant has no right to proceed against the suit land to recover debt on the basis of the decree obtained in O.A.No.424/1998?

(4) Whether the defendant No.2 proves that plaintiff has no cause of action to file this suit and same is liable to be dismissed?



(5) Whether the plaintiff proves that she is entitled for the relief of declaration and permanent injunction as prayed in the plaint?

(6) What order or decree?

9. The plaintiff to prove her case, examined herself as PW-1 and got marked documents as per Exs.P-1 to P-15. The defendants examined two witnesses as DW-1 and DW-2 and got marked documents as per Exs.D-1 to D-12.

10. The learned trial Judge heard the arguments and after appreciating the pleadings and evidence on record, answered issue Nos.1, 2, 3 and 5 in the negative and issue No.4 in the affirmative, and by the judgment and decree dated 02.11.2010, dismissed the suit.

11. The plaintiff being aggrieved by the said judgment and decree, preferred an appeal in R.A.No.37/2011 before the first Appellate Court. The first Appellate Court after hearing the arguments, raised the following points for determination :



(1) Whether the plaintiff proves that her husband was the exclusive owner in possession of the suit schedule land by virtue of the registered Sale Deed dated 6.4.1993 (Ex.P-2) and after his death, whether the plaintiff and her daughters are exclusive owners in possession of the suit land?

(2) Whether the plaintiff proves that the present defendant No.2 has no right to proceed against the suit land to recover the debt on the basis of the decree obtained in O.A.No.424/1998 as alleged in the plaint?

(3) Whether defendant No.2 proves that the plaintiff has no cause of action to file this suit?

(4) Whether the plaintiff is entitled for the relief sought?

(5) Whether the impugned judgment and decree requires any interference?

(4) What Order?

12. On re-appreciation of the materials available on record, the first Appellate Court answered point Nos.1, 2, 4 and 5 in the negative and point No.3 in the affirmative and ultimately dismissed the appeal. The said concurrent



findings of the Courts below are challenged by the plaintiff in the present appeal.

13. This Court while admitting the appeal on 05.02.2013, has framed the following substantial questions of law for consideration:

" (1) Whether both the Courts below erred in law in not considering the effect of the judgment and decree passed in O.S.No.106/1993, wherein the title of the husband of the plaintiff was declared though based on a compromise, despite recording findings to the effect that there was no fraud or collusion in arriving at such a compromise by the parties thereto and that the 2nd defendant - bank came into picture long after the decree was passed?

(2) Whether the Courts below fundamentally erred in not considering the binding effect of the judgment and decree in O.S.No.106/1993 on the parties to the suit including the 2nd defendant - bank?

(3) Whether the Courts below were right and justified in holding that the suit was barred under Section 34 of the Securitisation and Reconstruction



of Financial Assets and Enforcement of Security Interest Act, 2002?

(4) Whether the Courts below were right and justified in entering into the question regarding the effect of the registered Power of Attorney, the factum of its cancellation or otherwise, of the validity of the Sale Deed dated 12.03.1993 executed in favour of defendant No.1, in the light of the decree passed in O.S.No.106/1993 based on the compromise between the original owner, the General Power of Attorney holder and the subsequent purchasers namely the husband of the plaintiff and also the defendant No.1?"

14. I have heard the arguments of learned counsel for both sides and perused the materials placed on record.

15. Most of the substantial question of law framed in this appeal are pertaining to the judgment and decree passed in O.S.No.106/1993. Before the trial Court, an application was filed under Order XXII Rule 3 of CPC, which is marked as Ex.P-5 and Ex.P-6. It was signed by both the parties and their respective advocates. On the basis of the said application, the Pri.Civil Judge, Bengaluru



Rural District, Bengaluru, decreed the suit in terms of the compromise petition. As per Ex.P-5 i.e., application filed for compromise, the plaintiff and other defendants declared that, *"they have no objection to pass a judgment and decree declaring that fourth defendant Gundappa Sastry has acquired the absolute right, title and interest over the said suit schedule property as prayed in the written statement. The plaintiff has further no objection to pass a judgment and decree of permanent and perpetual injunction against him as prayed for in the written statement."*

16. The plaintiff of the said suit is D.Ramamurthy, who is defendant No.1 in the present suit. The said compromise decree was passed on 20th April 1993. This suit was filed on 23.06.2000. Since a compromise decree was passed in O.S.No.106/1993 against defendant No.1 in the present suit and in favour of husband of plaintiff through whom she is claiming the relief, she could have filed an execution petition, to execute the decree passed in



O.S.No.106/1993. In the entire plaint averments, there is no grievance against defendant No.1. He appears to be a formal party. However, the relief prayed by the plaintiff is to declare her as the absolute owner of the suit schedule property and that was already declared in favour of her husband, through whom, she claims her right over the property. In these circumstances, a second suit seeking the same relief against the defendant No.1 is not maintainable, particularly when it has been filed within the period of limitation for executing the earlier decree. Both the Courts below have failed to consider this aspect.

17. The prayer No.2 sought in the plaint of the present case, is reproduced above. The said prayer is against defendant No.2-Bank. It is also pertinent to note that defendant No.2-Bank is not claiming any title over the suit property by virtue of Mortgage Deed executed by defendant No.1. According to it, defendant No.1 offered the suit property as a security to the loan obtained by one M/s.Aqua Team, to which, defendant No.1 had stood as



surety and offered the suit property as a security. The defendant No.2-Bank enforcing the said security under the SARFAESI Act, and sought to recover the outstanding amount. Therefore, the relief of declaration does not arise since defendant No.2-Bank in its written statement itself stated that, as per the registered document furnished to it, defendant No.1 was the owner and hence, it has accepted the said security. Therefore, there was no cause of action for the plaintiff to seek the relief of declaration against defendant No.2.

18. Most of the facts and documents, except cancellation of Power of Attorney executed in the name of Mariyappa by Keshavamurthy, are not in dispute and they are not relevant to the present case. Both the Courts below held that second prayer is not maintainable before the Civil Court since it is barred by Section 34 of SARFAESI Act and if the plaintiff had any grievance, she ought to have approached the Debt Recovery Appellate



Tribunal (for short, `DRAT') under Section 18 of the SARFAESI Act.

19. The said findings of the Courts below does not call for any interference. It is a pure question of law. The suit is misconceived. When the plaintiff came to know through the officers of defendant No.2-Bank that they visited the suit schedule property prior to filing of the suit and that the Bank had obtained an order from DRT for the sale of suit schedule property to recover its outstanding amount, she could have directly approached the DRAT, instead of approaching the Civil Court. Section 17 of the SARFAESI Act reads as under :

"17. Application against measures to recover secured debts.—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty five



days from the date on which such measure had been taken.

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.



(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the



recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or



(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such



form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."

20. Any person, including the borrower, if he has any grievance about the action taken by the finance institution, that shall be decided by the DRT. The DRT is established under the provisions of SARFAESI Act. When a Special forum is created by the law to decide such type of cases, Jurisdiction of Civil Courts are barred. In addition there is specific bar under Section 34 of SARFAESI Act to approach the Civil Court. The plaintiff ought to have approached the DRAT challenging the orders passed by the DRT, wherein



the plaintiff was not at all a party. There shall not be parallel proceedings in two different forums; if conflicting orders are passed by both the forums, then parties to the proceedings may not get relief. Hence, suit was not maintainable before Civil Court, when defendant No.2 had obtained orders from DRT in O.A.No.424/1998. Unnecessarily, she has approached the Civil Court and fighting this litigation for last two and half decades, in a forum which has no jurisdiction. For above said reasons, she is not entitled for the relief prayed against defendant No.2 in the present suit.

21. The learned counsel for the appellant relied on the following judgments :

*(1) Hussain Ahmed Choudhury and others -vs- Habibur Rahman (Dead) through LRs.*¹

*(2) Central Bank of India and another -vs- Smt.Prabha Jain & others,*²

¹ 2025 0 INSC 553

² 2025 0 INSC 95



The law laid down in the aforesaid two judgments are not relevant to the facts of the present case. The Civil Court has already declared the title of Gundappa Shastry in respect of the suit property as per the compromise petition. The said decree was passed against defendant No.1 in the present case. After death of Gundappa Shastry, as a legal representative, appellant will succeed to the suit property. Hence, once again granting the relief of declaration of title is not necessary. At the cost of repetition, defendant No.2 is not claiming title over the suit property by virtue of any document. It is trying to recover the amount by sale of the suit schedule property which was offered as a security by defendant No.1. Therefore, the dispute is only in respect of right of defendant No.2 to sell the suit property that was mortgaged it by defendant No.1, since defendant No.2 had already obtained decree from DRT, correctness of the said award passed by the DRT has to be decided by the DRAT under Section 18 of the SARFAESI Act.



22. In view of these reasons, the suit is filed under misconception of law and not maintainable. Both the Courts below on different reasons, have dismissed the suit, as well as appeal, the same does not call for any interference by this Court.

23. In view of the aforesaid discussions, the substantial questions of law framed in the present appeal are answered against the appellant.

24. Accordingly, following order is passed :

ORDER

(i) The appeal is ***dismissed***. No costs.

(ii) Liberty is given to the appellants to approach the competent forum in accordance with the provisions of SARFAESI Act, seeking appropriate relief in accordance with law.

(iii) In view of disposal of the appeal, all pending applications, if any, shall stand disposed of.



NC: 2025:KHC:54751
RSA No. 2632 of 2011

Registry is directed to send back the records along with a copy of this judgment to the concerned Court.

Sd/-
(UMESH M ADIGA)
JUDGE

BK
List No.: 1 Sl No.: 31