

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 821 OF 2015

MR.BALKRISHNA V. LOTLIKAR. ... Petitioner
Versus
AUTHORISED OFFICER, STATE BANK OF
INDIA AND 8 ORS., ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. Padgaonkar Chaitanya Prakash, Advocate for the petitioner.
Mr. I. Agha, Advocate for the respondents No.1 and 2.
Mr. Vishwadh Sardessai, Additional Govt. Advocate for the respondent No. 3.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

Date:- 27th January, 2016

P.C.:

Heard Mr. S. D. Lotlikar, learned Senior Counsel appearing for the petitioner, Mr. I. Agha, learned Counsel appearing for the respondents No.1 and 2 and Mr. V. Sardessai, learned Additional Govt. Advocate appearing for the respondent No.3.

2. The above petition came to be filed on the premise that the respondent No.2, who is a secured creditor, has initiated proceedings under The Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFEASI) against the original creditor, the respondent No.4 herein, including the property belonging to the petitioner which is recorded in the Municipal record as House No.136/1 and situated in the property bearing Chalta

No.22 of P.T. Sheet No.90 of the City of Vasco da Gama.

3. Mr. Agha, learned Counsel appearing for the respondents No.1 and 2 has submitted that the action under the SARFEASI Act was only in respect of the rights and interest of the respondent No.4, which consists of a residential house bearing No.136/2, situated in the said property bearing Chalta No.22 of P.T. Sheet No.90 of the City of Vasco da Gama. The learned Counsel further submits that the action taken in terms of Section 14 of the SARFEASI Act is restricted to the rights and interest of the respondent No.4 in the said property.

4. Mr. S.D. Lotlikar, learned Senior Counsel appearing for the petitioner points out that the whole property was divided way back in the year 1967 pursuant to a Court Decree into two halves, whereby the western half was allotted to the petitioner and the eastern half came to be allotted to the predecessor of the respondent No.4. The learned Senior Counsel has also pointed out that the possession of the petitioner has not yet been disturbed in terms of the provisions of SARFEASI Act.

5. Mr. Agha, learned Counsel appearing for the respondents No.1 and 2 further submits that the property which has been mortgaged was allotted in terms of the inventory proceedings initiated upon the death of Manjunath Lotlikar, being Inventory

Proceedings No.5/1985 in the Court of Civil Judge, Sr. Division, Vasco da Gama. The learned Counsel has also brought to our notice the description in the said inventory proceedings which came to be recorded on 3rd October, 1989. On perusal of the said description, it reveals that the House Number is 136/2 as registered in the Municipal record.

6. Considering the said material on record and taking note of the contention of Mr. Agha, learned Counsel appearing for the respondents No.1 and 2 that the house bearing No.136/2 was the subject-matter of the mortgage created by the respondent No.4 along with the land appurtenant thereto, we find that the contention of the petitioner that the respondent No.2 has initiated action under the SARFEASI Act also in respect of the portion of the house bearing No.136/1 situated at Vasco and surveyed under Chalta No.22 of P.T. Sheet No.90 of City Survey Vasco-da-Gama, would not at all survive.

7. In view of the said clarification, based on the contention of Mr. Agha, learned Counsel appearing for the respondents No.1 and 2, the petition stands disposed of accordingly.

K. L. WADANE, J.

F. M. REIS, J.

ssm.