

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1686 of 2016

and

C.M.P.No.9010 of 2016

Punjab National Bank,
Asset Recovery Management Branch,
Khivraj Buildings I Floor,
Anna Salai,
Chennai - 600 006.

... Petitioner

vs

1.S.Kavan

2.S.Palaniammal

3.S.Kandasamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India
against the order of learned III Assistant Judge, City Civil Court, Chennai,
passed in I.A.No.16513 of 2015 in O.S.No.5350 of 2015 on 04.02.2016.

For Petitioner : Ms.Geetha Rajasekar

For Respondents : Mr.U.Karunakaran [R1]
Mr.S.Mohanasundararajan [R2]
Mr.K.Annadurai [R3]

ORDER

This revision arises against the order of learned III Assistant Judge, City Civil Court, Chennai, passed in I.A.No.16513 of 2015 in O.S.No.5350 of 2015 on 04.02.2016.

2. O.S.No.5350 of 2015 on the file of learned III Assistant Judge, City Civil Court, Chennai, is an action moved by first respondent/plaintiff seeking permanent injunction. Petitioner/third defendant moved I.A.No.16513 of 2015 seeking rejection of plaint. Informing that the suit has been filed for injunction, that the plaintiffs claim is of being entitled to share in the suit property, which is ancestral in nature and hence, the issue raised could be decided only during trial, the Court below, under order dated 04.02.2016, dismissed the application. Court below further has observed that the scope of sections 17 and 18 of Recovery of Debts due to Banks and Financial Institutions Act, is a limited one and the Court has ample power to deal with the matter. Against such order, the present revision has been filed.

3. Heard learned counsel for petitioner and learned counsel for respondents.

4. Both learned counsel have had much to say on the merits of their rival case. It is undisputed fact that in moving O.A.No.106 of 2002 before the Debts Recovery Tribunal I, Chennai the petitioner bank had impleaded one P.Sengoda Gounder, a mortgager, as D5 and that as on date of the application such person was no more. Petitioner bank has moved an application informing the 2nd and 7th respondent in the said original application to be his legal heirs. Under orders in I.A.No.880 of 2002 dated 05.07.2006, the Debts Recovery Tribunal I, Chennai has recognised such persons as the legal heirs of the deceased D5. Learned counsel for petitioner has submitted that in an act of collusion, the defendants have suppressed facts regards the real legal heirs of the deceased, the petitioner bank has done all as may reasonably be expected of it and the suit in O.S.No.5350 of 2015 was an malafide action meant to defeat the rights of the bank.

6. Learned counsel for first respondent submitted that besides the O.A.No.106 of 2002 having been moved against a dead person, the petitioner bank has impleaded as his legal heirs D2/ son and D7 as his wife, where as D7 is the mother in law of D2. Learned counsel further submitted that the first

respondent who had prayed for an order of permanent injunction in the suit intended to amend the plaint towards seeking relief of partition.

7. This Court would uphold the order under challenge as the petitioner bank has failed to implead the first respondent/plaintiff in the action before the Debts Recovery Tribunal, and he must be afforded an opportunity to make out a case of the property mortgaged to the bank being of ancestral nexus and of his having a right therein. Collusiveness which the petitioner attributes to the respondent is a matter to be raised by it before the trial court.

The civil revision petition shall stand dismissed. No costs.
Connected miscellaneous petition is closed.

31.08.2016.

Index:Yes/No
Internet:Yes/No
Note:Issue order copy on 01.12.2016.
To

The III Assistant Judge
City Civil Court,
Chennai

C.T.SELVAM, J

gm/kpr

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