

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30 / 08 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.641 of 2010

Mohammed Hanif Shah
Flat No.D-1, R.S.Grace Land Apartments,
No.81 and 83, Siruvallur Main Road,
Perambur,
Chennai 600 011 .. Plaintiff

Versus

"ARMS - A Division of Arcil"
(Asset Reconstruction Company (India) Ltd,
Represented by its Authorised Officer,
Having Office at No.1, 2nd Floor,
No.45, Montieth Road,
Egmore, Chennai 600 008 .. Defendant

PRAAYER: Plaint filed under Order IV Rule 1 of the Original
Side Rules read with Order VII Rule 1 CPC, praying for the
following judgment and decree against the defendant.

a) declaration that the plaintiff is the absolute owner
of the property described in schedule to the plaint;

b) permanent injunction restraining the defendants,
their men, agents, servants, person or persons, acting
through or under them, for and on behalf of them, from in
any manner, whatsoever, interfering with the peaceful
possession, enjoyment, occupation, use or dealing with the
plaint schedule mentioned property or any part thereof;

c) for costs of the suit;

For Plaintiff : Mr.S.R.Raghunathan
For Defendant : set ex-parte on 01.04.2013

J U D G M E N T

The suit is filed by the plaintiff for declaration that he is the absolute owner of the property described in the 'B' schedule and for permanent injunction restraining the defendants, their men, agents, servants, person or persons, acting through or under them, for and on behalf of them, from in any manner, whatsoever, interfering with the peaceful possession, enjoyment, occupation, use or dealing with the plaint schedule mentioned property or any part thereof.

2. The suit property belonged to one Mrs.Ann Miriam Frantz and two others. A Power of Attorney was executed by them in favour of one B.Suramanyam on 24.01.2003 and 14.02.2003 registered as Document Nos.103 of 2003 and 105 of 2003 respectively, which are marked as Exs.P.1 and P.2. As per the said documents, the power of attorney was empowered to sell and develop the suit property into apartments or flats. About 16 sale deeds were executed by the said Power of Attorney to prospective purchasers of the flat on various dates. The purchasers had got the sale

deeds with respect to the undivided share of the land registered in their name. Accordingly, one B.Anusuya had purchased an undivided share of 624.62 sq.ft by virtue of a sale deed dated 18.03.2005 in document No.2186 of 2005. After the purchase, mutation of the documents were also effected in the name of the said Anusuya. The said sale deed of Anusuya was marked as Ex.P.3. After the purchase of the undivided share, she had also entered into an agreement for construction, which is marked as Ex.P.4.

3. While so, the plaintiff herein had purchased under Ex.P.7- sale deed dated 03.01.2007 with respect to Flat No.D-1, in R.S.Grace Land Apartments at Door Nos.81 and 83, Siruvallur Main Road, Perambur, Chennai -11 for a valuable consideration from the said Anusuya and the plaintiff had been in possession and occupation of the property from the date of purchase. The plaintiff also had effected mutation in the revenue records as seen from Exs.P.8 and P.11. The water and sewerage tax also stand in the name of the plaintiff, which is marked as Ex.P.12. The periodical maintenance charges paid by the plaintiff to the Flat Owners Association is marked as Ex.P.16.

4. In his endeavour to substantiate his right and title over the suit property, the plaintiff had marked Ex.P.6, which is the Title Clearance Report with respect to the suit

property given at the time of availing financial facility from the ICICI Bank. The Encumbrance Certificates marked as Ex.P.9 and Ex.P.10 would reflect the transfer of property in the name of the plaintiff. The original documents of title in respect of the suit property was pledged with ICICI Bank at the time of availing the housing loan and now it is made over to HSBC Ltd. The plaintiff also had marked a letter from HSBC dated 03.05.2014 as Ex.P.23. The said letter gives out the list of documents held by HSBC with respect to the suit property for the home loan account 042-692194-881.

5. When the facts remain as above, the defendant-Company mistaking the property of the plaintiff to be the property over which they had claim, issued notice under Section 13(2) of the SARFAESI Act under Ex.P.13. It is stated by the plaintiff that the said notice was pasted on the door of his Flat Door No.D-1, which absolutely belonged to him. The defendant, who is Asset Reconstruction Company, claimed that the Standard Chartered Bank, Madras had assigned in their favour a debt alleged to be in respect of a transaction with one Mrs.S.Renuga Devi with the Standard Chartered Bank. Shocked by the said act, the plaintiff sent a detailed reply dated 31.12.2009 under Ex.P.14, explaining in detail about the mistaken identity of the property. The plaintiff also met the officials of the defendant in person

and submitted the documents evidencing his absolute ownership of the property. The defendant acknowledged the notice issued by the plaintiff and replied on 04.01.2010 as per Ex.P.15. After Ex.P.15-notice, the plaintiff also received a reply from the defendant, wherein it was mentioned that the plaintiff had no legal right over the suit property. The said notice was marked as Ex.P.17. The said notice was suitably replied by the plaintiff under Ex.P.18. Hence, the plaintiff was constrained to file the suit.

6. Though summons of the suit was served on the defendant-Company as early as on 13.08.2010, there was no representation for the defendant and hence, they were set ex-parte. The documents Exs.P.1 to P.23 were marked by the plaintiffs to prove the case as mentioned above.

7. In the reply notice, marked as Ex.P.22, issued on behalf of the defendant, it is stated as follows:-

"...3. Our client states that one Mrs.S.Renuga Devi, Wife of Mr.M.Devarajan, residing at No.209/3, ICF North Colony, Chennai 600 038, approached Standard Chartered Bank (who has assigned the financial assets in favour of our client subsequently under the SARFAESI Act), No.58, Armenian Street, Chennai 600 001,

seeking financial assistance to purchase an immovable property under a scheme of Housing / Mortgage loan in the year 2004.

4. The said Standard Chartered Bank, based upon the value of property identified by the said S.Renuga Devi, sanctioned the housing / mortgage loan and using the said loan amount, a property of all that piece and parcel of undivided share of 1220/17200 x 8806 sq.ft. Part of the land (notional extent of 624.62 sq.ft) together with constructed area of 1220 sq.ft., bearing Flat No.D1, I Floor, R.S,.Grace Land, Door No.53 and 54 (Old Nos.27 and 28), Siruvallur High Road (Main road), Perambur, Chennai 600 011 comprised in Survey Nos.53/1A, 53/1B and 53/2B, in Block No.16, was purchased by the said S.Renuga Devi, under a registered sale deed dated 11.08.2004, Doc.No.6426/2004, registered in the Office of the Sub-Registrar, Sembium, Chennai.

5. The borrower Mrs.S.Renuga Devi, in terms of sanction, deposited the original sale deed dated 11.08.2004- Document No.6426 of 2004, a construction agreement dated 29.07.2004, entered into between R.S.Constructions, represented by its proprietor Mr.B.Subramanyam (who happens to be the power agent of the

predecessor in title) and her, the agreement for sale dated 29.07.2004 entered into between (1) Mrs. Anne Miriam Frantz (2) Mrs. Valerie Christina Glover and (3) Mrs. Rosa Jesuina Fernandes and the said Rengua Devi and other parental documents with the said Chartered Bank and further agreed to repay the housing / mortgage loan amount with interest in equated monthly installments, spread over a period agreed upon.

6. Since the said borrower, namely Mrs. S. Renuga Devi defaulted in making periodical payments, after giving opportunity, the said Bank has assigned their right to recover the loan amount and the accrued interest with our client. After the assignment and in view of continuous default, our client was constrained to issue a notice under Section 13(2) of the SARFAESI Act dated 09.11.2009 and the said notice was returned un-served and thereafter the said notice was pasted on the secured assets of our client, apart from effecting paper publication of the said notice, as per the SARFAESI Rules."

8. It is further stated in the said notice that when the notice was pasted by the defendant on the suit premises,

no body was present in the premises in Flat Door No.D-1. However, the learned counsel for the plaintiff submits that the plaintiff has been residing in the said premises from the date of his purchase. The defendant even without ascertaining the ownership of the property had advanced loan to a person, who has hoodwinked the Bank. The Bank has wrongly claimed as security of the property belonging to the plaintiff, taking advantage of the fact that the said Renuga Devi mentioned in the reply notice and the erstwhile owner of the plaintiff had purchased the same extent of undivided share of the property on 11.08.2004 and 18.03.2005 respectively. The plaintiff has produced the Construction Agreement under Ex.P.4 to firm up the allotment of Flat bearing Door No.D-1 in his favour whereas the defendant though had claimed that the original documents standing in the name of the said Renuga Devi are in their possession, had not cared to appear before this Court to produce and prove the same. In the absence of the Construction Agreement, which would go to show that the allotment of correct number of the flat, the defendant cannot substantiate their case. The plaintiff having pleaded and proved his ownership over the suit property, is entitled for the decree as prayed for.

9. Accordingly, it is hereby declared that the plaintiff is the absolute owner of the suit property and

there will be a decree for injunction restraining the defendant from interfering with the peaceful possession, enjoyment, occupation, use or dealing with the suit property.

10. In the result, the suit is decreed as prayed for.
No costs.

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF

P.W.1 -Moammed Hanif Shah

LIST OF EXHIBITS MARKED ON THE SIDE OF THE PLAINTIFF

<i>Sl.N o</i>	<i>Exhib its</i>	<i>Date</i>	<i>Description of documents</i>
1	P-1	14.02.2003	Certified copy of the general power of attorney
2	P-2	24.01.2003	Certified copy of the general power of attorney
3	P-3	18.03.2005	Xerox copy of sale deed
4	P-4	18.03.2005	Xerox copy of construction agreement
5	P-5	21.11.2006	Order for name transfer
6	P-6	01.12.2006	Xerox copy of title clearance report
7	P-7	03.01.2007	Duplicate copy of sale deed
8	P-8	26.04.2007	Order for name transfer
9	P-9	30.12.2009	Xerox copy of encumbrance certificate
10	P-10	30.05.2006	Xerox copy of encumbrance certificate
11	P-11	26.04.2007	Property tax demand card
12	P-12	-	Xerox copy of water and sewerage tax cum charges card
13	P-13	-	Xerox copy of notice
14	P-14	31.12.2009	Copy of the letter sent by the plaintiff to the defendant

Sl.No	Exhibits	Date	Description of documents
15	P-15	04.01.2010	Xerox copy of the letter sent by the defendant to the plaintiff
16	P-16 (series)	-	Receipts
17	P-17	13.05.2010	Letter sent by the defendant to the plaintiff
18	P-18	28.05.2010	Copy of the letter sent by the plaintiff's wife to the defendant
19	P-19	04.06.2010	Xerox copy of the letter sent by the defendant to the plaintiff's wife
20	P-20	15.06.2010	Copy of the legal notice sent by the plaintiff's advocate to the defendant
21	P-21	18.06.2010	Xerox copy of the reply sent by the defendant to the plaintiff's advocate
22	P-22	24.06.2010	Xerox copy of the reply sent by the defendant's counsel to the plaintiff's counsel
23	P-23	03.05.2014	Letter from HSBC Bank

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sd/.P.S.N.J
30.08.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/01.03.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.