

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.969/2010

Mr.Tarun Nichani

.. Appellant

..Vs..

1.Karur Vysya Bank,
Rep.by the Chief Manager,
a Scheduled Bank having its
Head Office at Karur and one
of its branches at
249-A, East T.V.Samy,
R.S.Puram, Coimbatore-641 002.

2.Thiru.Natarajan

3.Tmt.S.Subulakshmi

4.Thiru.S.Balasubramaniam

5.Thiru.S.Jayakumar

6.Thiru.S.Vishweswaran

7.Thiru.S.Ashok Kumar

.. Respondents

Prayer: Appeal Suit is filed under Section 96, r/w Order 41 Rule 1 of the Civil Procedure Code, to set aside the Judgement and Decree dated 13.05.2010 passed in O.S.CFR.No.10541 of 2010 on the file of the Vacation Judge, Coimbatore for the Court of Sub-Judge, Coimbatore.

For Appellants : Mr.R.Yashod Vardhan
Senior Counsel

For R-1 : Mr.A.V.Radhakrishnan

For R-2 : No Appearance

For RR-3 to 7 : Mr.S.Saravanan

JUDGEMENT

This appeal has been filed against an order dated 13.05.2010 in and by which, the learned trial Judge viz., the Vacation Civil Judge, Coimbatore, rejected the plaint filed by the appellant. The claim of the appellant was that he is a sub-lessee under one Natarajan who is the main lessee under the respondents 3 to 7. It is also contended that the first respondent Bank had initiated proceedings under the SARFAESI Act, 2002 [hereinafter referred to as "the Act"] against the owners viz., the respondents 3 to 7 and in the course of the proceedings, the first respondent Bank had taken possession of the property from the appellant, which he has occupied as a sub-lessee. Therefore, the present suit was filed contending that the plaintiff is entitled for restoration of possession, since he was dispossessed without following the due process of law on 02.02.2010.

2. The learned Vacation Civil Judge rejected the plaint holding that the suit is not maintainable as against the Bank. It was also concluded that the re-entry of the plaintiff into the leased premises could be possible in the pending RCOP.No.137/2007 is said to have been filed by Mr.Natarajan, main lessee. On the above conclusions, the learned trial Judge, rejected the plaint. Aggrieved, the plaintiff is on appeal.

3. I have heard Mr.R.Yashod Vardhan, learned Senior Counsel appearing for the appellant, Mr.A.V.Radhakrishnan, learned counsel appearing for the 1st respondent Bank and Mr.S.Saravanan, learned counsel appearing for the respondents 3 to 7. The 2nd respondent did not appear in-person or through counsel.

4. Mr.R.Yashod Vardhan, learned Senior Counsel for the appellant would contend that having taken possession from the plaintiff, the 1st respondent Bank had now handed over the possession of the property to the respondents 3 to 7, who are the owners in derogation of his rights. It is also the contention of the plaintiff that Natarajan was specifically empowered to sub-lease the property and that it was a vacant land, sub-leased to him and he had put up a construction over the suit property.

5. The fact that the possession was taken from the plaintiff by the first respondent Bank is not in dispute, the same is also found and recorded in the order of the Debts Recovery Tribunal, Coimbatore made in S.A.No.7/2011. After the rejection of the plaint, it appears that the plaintiff approached the Debt Recovery Tribunal seeking restoration. The same was resisted contending that the Tribunal is not a Competent Authority to go into the question of tenancy, and it

can be gone into by the Courts under the relevant Rent Control Laws. However, the Tribunal found that since, the Sub-Lease is claimed to have been made after the issuance of notice under the Act, the same is not binding on the authorised officer. The Tribunal may be correct in holding that the creation of the tenancy will not bind the authorised officer under the Act, but a contract of tenancy is still binding on the landlord viz., the respondents 3 to 7, who had created a lease after mortgaging the property in favour of the Bank. Even assuming that the lease has been effected after the mortgage, having found that it does not have the jurisdiction to go into the question of tenancy, the Debts Recovery Tribunal, Coimbatore, has dealt with the issues relating to the tenancy and concluded that the plaintiff was not consistent in his pleadings regarding tenancy.

6. Mr.S.Saravanan, learned counsel for the respondents 3 to 7 landlord/owners would contend that the Bank has rightly invoked the provisions of SARFAESI Act and dispossessed the occupants. He would rely upon the judgement of the Hon'ble Supreme Court reported in CDJ (2014) SC 297, Harshad Govardhan Sondagar .Vs. Internl. Assets Reconstrn.Co.Ltd.& Others wherein, the Hon'ble Supreme Court after referring to Section 34 of the Act has held that the Civil Court will not have jurisdiction to interfere with the proceedings under the SARFAESI Act. In the case on hand the suit is not one challenging the proceedings under the SARFAESI Act, the suit is one for recovery of possession on the apprehension, after having taken possession from the plaintiff, the Bank in collusion with the defendants 3 to 7 is attempting to re-deliver the possession to the defendants 3 to 7. Therefore, the bar in under Section 34 will not be attracted.

7. Mr.S.Saravanan, learned counsel would further contend that the tenancy itself was created after the issuance of the notice under SARFAESI Act. Having created a tenancy after having received notice under SARFAESI Act, the land owners cannot take advantage of their own wrong.

8. Mr.Saravanan would then rely upon the findings of the Debt Recovery Tribunal regarding tenancy. In my opinion, it is beyond the jurisdiction of the Debts Recovery Tribunal. The Debts Recovery Tribunal has no jurisdiction to go into the question of tenancy, between the landlord and the tenant. May be, the Debt Recovery Tribunal is right in concluding that the tenancy is not binding on the Bank and therefore, the Authorised Officer has every right to take possession of the secured asset from the tenant. At the same time, the Debt Recovery Tribunal cannot deal with the tenancy disputes. The learned Vacation Civil Judge has concluded that the right of re-delivery is possible only in the pending RCOP.No.137/2007 which has been filed by the main tenant Natarajan against the plaintiff/appellant. This view of the learned Vacation Civil

Judge is totally erroneous as the Rent Control Act does not have any provision for re-delivery of property to a tenant, except in cases, where the landlord is given possession for repairs or the landlord having obtained eviction on the ground of demolition and re-construction does not demolish the building or under Section 10(3)(a)(i) or (iii) of the Tamil Nadu Buildings (Lease and Rent Control Act), 1960, wherein, he seeks possession for his own occupation, but fails to occupy the premises within a period of time. None of the provisions of the Tamil Nadu Buildings (Lease and Rent Control Act), 1960, would enable the rent control Courts to restore possession to a tenant. If a tenant's possession is interfered with it is for the tenant to approach, the Civil Court invoking either Section 6 of the Specific Relief Act seeking possession based on previous possession or under general law.

9. Hence, the learned Vacation Civil Judge was not right in rejecting the plaint, the bar enacted under the Act is confined to the proceedings for which a provision has been made under the said Act. In the absence of any provision for restoration of possession to a person in the proceedings under the SARFAESI Act, the suit cannot be said to be barred under the provisions of the Act. Therefore, the order of the learned Vacation Civil Judge rejecting the plaint is set aside. The appeal is allowed. No costs. The trial Court is directed to number the suit and dispose it of in accordance with law.

sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

KP

To

1. Sub Judge Court,
Vacation Judge,
Coimbatore.
2. The Section Officer,
V.R. Section, High Court, Madras.

+2 CC Mr.R.S.RAVEENDHREN Advocate SR.No.65199
+1 CC Mr.A.V.Radhakrishnan Advocate SR.No.64555
+1 CC Mr.S.Saravanan Advocate SR.No.64406

KS (CO)
EGR 30/10/2017

A.S.969 of 2010