



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2017

CORAM:

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD).No.1806 of 2017

1. L.Saraswathi
2. Renuka Mohan

... Petitioners

Vs.

1. L.Kamala Kannan
2. The IDBI Bank Limited,
represented by its Authorised Officer,
Specialised Corporate Branch,
LIC Building,
Door No.3,
First Floor,
West Marret Street,
Opposite to Railway Station,
Madurai 625 001.

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 18.05.2017 passed in unnumbered O.S.No. of 2017 on the file of the Principal District and Sessions Court, Theni.

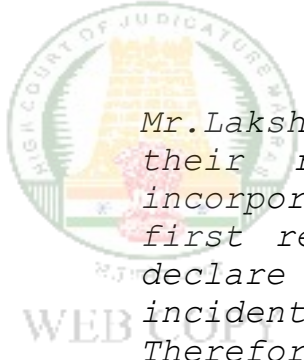
For Petitioners	: Mr.T.R.Jeyapalam for Mr.J.Barathan
For R1	: No appearance
For R2	: Mr.J.Prabhakaran

O R D E R

The Civil Revision Petition has been filed to set aside the order dated 18.05.2017 passed in unnumbered O.S.No. of 2017 on the file of the Principal District and Sessions Court, Theni.

2. The learned counsel for the petitioners would draw the attention of this Court to the proceedings of the Debts Recovery Tribunal, wherein it has been specifically stated as follows:

"Having taken into consideration of the rival contentions, this Tribunal is of the view that the petitioners/applicants have every right to work out their remedy before the appropriate Civil Forum for declaration and partition as per law since they are tracing their title through the deceased



Mr.Lakshmanan. If at all they are aggrieved they cannot agitate their right u/s 17(1) of the SARFAEST Act, which is incorporated in the Act to weigh the measures taken by the first respondent Bank alone. This Tribunal has no powers to declare the right of the parties. It can only go into the issue incidentally but not either subjectively or objectively. Therefore, this Tribunal is not inclined to pass any interim order. However, the respondent Bank is directed to file counter and reply statement. For filing counter and reply statement by 08.11.2016. Call on 08.11.2016."

3. The learned counsel for the petitioners would further submit that there is no secured interest created as far as their property is concerned and that is the reason why the Debts Recovery Tribunal has directed the petitioners to approach the civil forum for their remedy and hence, the petitioners have rightly approached the civil forum.

4. The learned counsel for the second respondent produced the judgment reported in 1 (2007) BC 227 (*Jammu and Kashmir Bank vs. Jai Lakshmi Dravid*, stating that there is a bar to file a suit before the Civil Court, but the Debts Recovery Tribunal has passed an order directing the parties to approach the Civil forum. Accordingly, the petitioners have filed a suit before the civil forum, since the right and title of the property has been disputed. He would further submit that the Civil Court has got jurisdiction and the learned Principal District and Sessions Court, Theni has rightly dismissed the application.

5. In my considered opinion, the Civil Court has not appreciated the spirit of the order passed by the Debt Recovery Tribunal. The finding of the Civil Court is that the petitioners/applicants have every right to work out their remedy before the appropriate civil forum for declaration and partition as per law since they are tracing the title through the deceased Lakshmanan. As rightly stated, the Tribunal has no powers to declare the rights of the parties and it can go into the issue incidentally but not either subjectively or objectively. It was the specific contention of the petitioner that there is no secured interest accrued as far as the property is concerned and therefore, the Debt Recovery Tribunal has directed the petitioners to approach the civil forum and whether the Civil Court has got jurisdiction, in the present circumstances of the case, can be decided after numbering the suit as a preliminary issue and the learned Principal District and Sessions Court, Theni has rejected the plaint without considering the order passed by the Debts Recovery Tribunal. So, the learned Principal District and Sessions Court, Theni is directed to number the plaint and to decide whether the civil Court has got



jurisdiction as a preliminary issue. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CSIII)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal District and Sessions Court,
Theni.
2. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.T.R.Jeyapalam, Advocate, SR.No.91137

akv
RL/4C/2P/SKN/RSK/SAR4/27/12/2017

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