

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2018

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P(PD)No.3025 of 2011

1.P.Myilsamy
2.S.Ravi

...Petitioners

Versus

1.M.C.Kalikutty Gounder
2.K.Ganesan
3.M/s.Coimbatore Hatcheries,
Rep. by its partners,
G.Suresh Babu and Ravichandran,
Office at No.19, Lakshmi Nagar,
Sakthi Nagar, Coimbatore.
4.G.Suresh Babu
5.Ravichandran
6.Canara Bank
Specialised Agriculture Finance Branch,
11th Street, Tatabad,
Coimbatore.
7.The Recovery Officer, सत्यमेव जयते
Debts Recovery Tribunal,
Coimbatore.

...Respondents

WEB COPY

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside and reverse the order dated 16.03.2011 in O.S.No.233 of 2011 on the file of the Sub Judge, Coimbatore and consequently, implead the first respondent as a necessary party to the suit.

For Petitioners : Ms.Ananda Gomathy Sivakumar
For Respondents - 1,
4 & 6 : No Appearance
Respondent - 2 : Died
Respondents - 3 & 5 : Not ready in notice
Respondent - 6 : Mr.R.Rajesh
Respondent - 7 : Court

ORDER

This Civil Revision Petition is filed challenging the order passed by the learned Subordinate Judge, Coimbatore in CFR No.7921 of 2011 which is subsequently numbered as O.S.No.233 of 2011, in and by which the learned Subordinate Judge, Coimbatore has rejected the plaint against the seventh defendant by stating the following reasons:

"The seventh defendant as officer of the Debt Recovery Tribunal, Coimbatore on the application filed by the sixth defendant and on perusal of the evidence and documents filed before him, passed order for issue of Recovery Certificate. Further in the plaint, plaintiffs has not alleged any specific allegation against the seventh defendant. The plaintiff also submitted the first defendant also taken steps to defend the order passed by the Debt Recovery Tribunal by filing necessary application to set aside the exparte final order. Since there is no specific

allegation, against the seventh defendant, Debt Recovery Tribunal, Coimbatore, in the alleged fraud committed as alleged in the plaint, and also no specific prayer sought against the seventh defendant this Court is of opinion that the seventh defendant is not a necessary party to the case filed by the plaintiffs. Hence with regard to seventh defendant, plaint is rejected. Suit is taken on file with regard to Defendants 1 to 6."

2. Heard Mr.Ananda Gomathy Sivakumar, learned counsel for the petitioners and Mr.R.Rajesh, learned counsel for sixth respondent.

3. It was represented that the suit has since been numbered as O.S.No.233 of 2011. Pending suit, the sixth respondent Bank had filed two Revision Petitions in C.R.P(PD)No.2586 & 2587 of 2013 which were dismissed on 09.11.2018 holding as follows:

"12. In view of the fact that the Division Bench of this Court held that the issue of either fraud or impersonation or whether mortgage created by the first defendant M.C.Kalikutty Gounder, vendor of the respondents herein, in favour of the Bank is legal or not is a matter to be adjudicated in the civil suits and in criminal case and the applications filed by the petitioner for rejection of plaint on the ground that the Civil Court has no jurisdiction are devoid of merits and are not maintainable."

and therefore, suit is pending on the file of the learned Subordinate

Judge, Coimbatore.

4. The entire suit proceeds on the footing that the defendants 2 to 6 had created a forged mortgage deed in favour of the sixth defendant Bank. According to the plaintiff, the said partition deed is a forged document based upon which the sixth respondent Bank had obtained a decree order in T.A.822 of 2002 which had constrained the plaintiffs/revision petitioners to file the present Civil Revision Petition.

5. The petitioners are the purchasers of the properties belonging to the first respondent Mr.M.C.Kalikutty Gounder. It is seen that the third respondent had availed a loan from the sixth respondent Bank vide sanction letter of the Bank dated 22.08.1995, the first respondent Mr.M.C.Kalikutty Gounder created a mortgage in favour of the Bank as guarantor on 28.09.1995. Even prior to the filing of the proceedings by the sixth respondent Bank, the revision petitioner had sought to declare the order obtained by the sixth respondent Bank from the Debts Recovery Tribunal, Coimbatore in T.A.No.822 of 2009 dated 27.08.2003 as non-est, ultra vires, null and void and not binding on the suit property and for consequential permanent injunction restraining the seventh respondent from interfering with the plaintiff's

peaceful possession and enjoyment of the suit property by taking any action as against the suit property by way of attachment or sale or otherwise. The seventh respondent, Recovery Officer had been added for the limited purpose of ensuring that he does not proceed further on the basis of the order in T.A.No.822 of 2008 as rightly held by the learned Subordinate Judge, Coimbatore. The seventh defendant is only discharging his duty as an Officer of the Tribunal and therefore, considering the fact that no allegations have made against him and no specific relief has been sought against him, he is neither a proper nor necessary party to the proceedings, I find no infirmity in the order of the learned Subordinate Judge, Coimbatore.

6. In the result, this Civil Revision is dismissed and the order passed by the learned Subordinate Judge, Coimbatore in O.S.No.233 of 2011 dated 16.03.2011 is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

26.10.2018

mrr
Index : Yes/No

P.T.ASHA, J.,

mrr

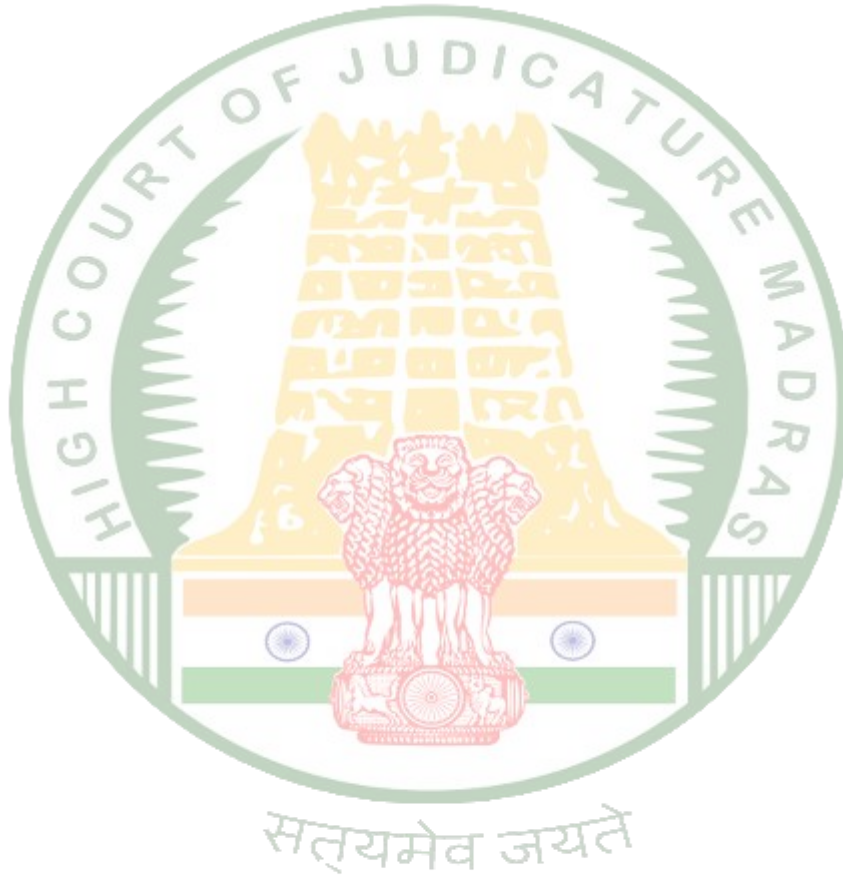
To
The Sub Judge,
Coimbatore.



C.R.P(PD)No.3025 of 2011

26.10.2018

WEB COPY



WEB COPY