

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.22335 of 2018 and
W.M.P.Nos.26171 to 26173 of 2018

- 1.Jayaraman
- 2.M.Sumathi
- 3.P.Deepak

.. Petitioners

Vs.

- 1.The General Manager,
Canara Bank,
T.Nagar Habibullah Road Branch,
150, Habibullah Road, Chennai - 600 017.
2. The Assistant General Manager,
Canara Bank,
T.Nagar Habibullah Road Branch,
150, Habibullah Road, Chennai - 600 017.
3. The Chief General Manager,
Canara Bank,
T.Nagar Habibullah Road Branch,
150, Habibullah Road, Chennai - 600 017.
4. The Senior General Manager,
Canara Bank,
T.Nagar Habibullah Road Branch,
150, Habibullah Road, Chennai - 600 017.
5. The Chief Manager cum Asset Recovery Officer,
55, Ethiraj Salai, Egmore, Chennai - 600 008.
6. P.Sreelatha
7. Venkatachalapathy Electricals Pvt. Ltd.,
rep by its Managing Director J.Vanjinathan
No.7/26, Sundar Nagar,
1st Avenue, 1st Cross Street,
Ekkatuthangal, Chennai - 600 032.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus forbearing the respondents 1 to 5/its officials, representatives, assignees/transferees/agents/servants and/or any person claiming through the respondents from in any manner whatsoever initiating any action/proceedings including under the SARFAESI Act 2002 in respect of the 7/16th undivided share of the petitioners [1/16th undivided share of the petitioners 1 & 2 and 5/16th undivided share of the 3rd petitioner] in and to the said property bearing

Old No.3, New No.16, Joseph II Street, Pazhavanthangal, Chennai - 600 114 admeasuring an extent of 5669 sq.ft. or thereabouts together with the Ground and First floor building constructed thereon comprised in Survey No.55/2, Nanganallur Village, then Tambaram Taluk, now Alandur Taluk, Kanchipuram District situate within the Sub Registration District of Alandur and in the Registration District of Chennai South pending final adjudication/decreed in the Original suit for partition in O.S.No.122 of 2016 on the file of the District Court, Chengelpattu on the claim/share of the petitioners share to the said property.

For Petitioners : Mr.Pari Ramaiah

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The petitioners have filed the above Writ Petition to issue a Writ of mandamus forbearing the respondents 1 to from in any manner whatsoever initiating any action/proceedings including under the SARFAESI Act 2002 in respect of the 7/16th undivided share of the petitioners in property bearing Old No.3, New No.16, Joseph II Street, Pazhavanthangal, Chennai - 600 114 admeasuring an extent of 5669 sq.ft. together with the Ground and First Floor building constructed thereon comprised in Survey No.55/2, Nanganallur Village, then Tambaram Taluk, now Alandur Taluk, Kanchipuram District situate within the Sub Registration District of Alandur and in the Registration District of Chennai South pending final adjudication/decreed in the Original suit for partition in O.S.No.122 of 2016 on the file of the District Court, Chengelpattu on the claim/share of the petitioners in the said property.

2.It is the case of the petitioners that they are entitled to 7/16th share and that the 6th respondent, who had only 1/4th share in the said property, fraudulently and illegally mortgaged the whole property with the respondent - Bank, binding the share of the minor children by fabricating the legal heirship certificate and by suppressing the fact that late Mrs.J.Vasanthi had 1/4th undivided share in the said property. According to the petitioners, late J.Vasanthi, who is the wife of the 1st petitioner, the mother of the 2nd petitioner and the grand mother of the 3rd petitioner, filed a Civil Suit in O.S.No.122 of 2016 on the file of the District Court, Chengelpattu seeking for the relief of partition and permanent injunction and the same is pending. It is also the case of the petitioners that during the pendency of the said suit, the plaintiff viz., J.Vasanthi had died on 05.07.2018 and her 1/4th undivided share devolved upon the petitioners and her minor grand daughter.

3.The petitioners have also contended that the 6th

respondent had mortgaged the entire property with the respondents 1 to 5 and therefore, they should be injuncted from initiating any proceedings in respect of the petitioners 7/16th share.

4.It is pertinent to note that even during the life time of J.Vasanthi, she had filed an application in I.A.No.361 of 2018 in O.S.No.122 of 2016 to implead the respondent - Bank as a defendant in the suit. However, the petitioners have not stated anything about the said application in the affidavit filed in support of the Writ Petition.

5.On a perusal of the plaint in O.S.No.122 of 2016, annexed in the typed set of papers, it could be seen that the petitioners are not made as parties to the said proceedings. That being the case, the relief sought for in the present Writ Petition to forbear the respondent - Bank from initiating any proceedings against the petitioners till the disposal of the suit in O.S.No.122 of 2016, cannot be granted.

6.If the borrower commits default in repaying the loan amount, it is always open to the respondent - Bank to initiate proceedings under the SARAFESI Act in accordance with law. Mere pendency of the Civil Suit shall not stand in the way of the respondent - Bank from initiating proceedings against the defaulters.

7.That apart, the filing of the Writ Petition is at a premature stage, which cannot be entertained by this Court. If the respondent - Bank initiates proceedings under the SARFAESI Act, the petitioners can challenge the same under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal.

8.In this view of the matter, we are not inclined to entertain the Writ Petition. The Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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+1 CC to Mr.L.G. Sahadevan, advocate sr 59884.

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PVS (CO)
SP(10/09/2018)