

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2018

CORAM:

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.11772 of 2018
and W.M.P.No.13741 of 2018

V. Dhanaraj

... Petitioner

Vs.

1. The National Trust Housing Finance Ltd.,
D.No.5B, 5th Floor, G.G.Emerold,
No.312, Valluvarkottam High Road,
Nungambakkam, Chennai - 600 034.

2. Basheer Ahamad

.... Respondents

PRAYER:

Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus to call for the records relating to the order dated 16.03.2018 passed in AIR(SA)8/2018 (SA No.68/2016 on the file of D.R.T.-II) to the Debt Recovery Appellate Tribunal at Chennai filed against the impugned order dated 23.11.2017 passed in S.A.No.68 of 2018 on the file of D.R.T-II Chennai) and quash the same and direct the first respondent to exclude the vacant land measuring 616 sq.ft land out of total extent of 2136 sq.ft land and building situate at rear side forming part and parcel of the premises bearing Old No.24, New No.54, Kannabiran Koil Street, Erukkancheri, Chennai - 600 118 comprised in Survey NO.93/5. T.S.No.51 Block No.7 with S.R.O. Sembium and DRO North Chennai the subject matter in the decree dated 31.05.2011 passed in O.S.No.9286 of 2010 on the file of the I Assistant Judge, City Civil Court, Chennai from the SARFAESI proceedings.

For Petitioner : M/s.J.R.K.Bhavanantham

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O R D E R

(Order of the Court was made by SUBRAMONIUM PRASAD, J.)

This Writ Petition is directed against the order dated 16.03.2018 passed by the Debts Recovery Appellate Tribunal at Chennai, in AIR (SA) No.8 of 2018 in S.A.No.68 of 2016. The Debts Recovery Appellate Tribunal by the impugned judgment has dismissed the appeal and has refused to interfere with the order passed by the Debts Recovery Tribunal.

The brief facts set out in the Writ Petition are as follows:-

2. The petitioner entered into an agreement to sell on 01.09.2007 for purchase of a vacant site of an extent of 616 sq.ft out of 2136sq.ft of a property, which is situated in the rear side of Old No.24, New No.54, Kannabiran Koil Street, Erukkancheri, Chennai - 600 118 with one G.Paramasivam, who is the owner of the entire 2136 sq.ft., Old No.24, New No.54, Kannabiran Koil Street, Erukkancheri, Chennai - 600 118.

3. The said G.Paramasivam, executed a sale deed in favour of one Basheer Ahamed, (respondent No.2 herein) the entire 2136 sq.ft. situated at No.54, Kannabiran Koil Street, Erukkancheri, Chennai - 600 118.

4. The said Basheer Ahamed took a housing loan from the National Trust Housing Finance Limited, (respondent No.1) and for the purpose of securing the loan mortgaged the property by depositing the title deeds.

5. The petitioner filed a Civil Suit in O.S.No.9286 of 2010 on the file of the learned I Assistant Judge, City Civil Court, Chennai, for specific performance of the agreement to sell dated 01.09.2007. Neither Basheer Ahamed nor the respondent No.1 was made party to the suit.

6. An exparte decree was passed on 31.05.2011 against G.Paramasivam. The learned I Assistant Judge, City Civil Court, Chennai, decreed the suit directing the defendant in the suit i.e. G.Paramasivam to execute the registered sale deed and to deliver the vacant possession of the suit schedule property, which is 616 sq.ft out of 2136 sq.ft. Old No.24, New No.54, Kannabiran Koil Street, Erukkancheri, Chennai - 600 118.

7. Respondent No.2 defaulted in repayment of loan, and his account was classified as a non-performing asset. A notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, (hereinafter referred to as "the SARFAESI Act", for sake of brevity) was issued demanding a sum of Rs.17,23,394/- as on 30.04.2012. Respondent No.2 did not comply with the notice under Section 13(2) and possession notice under Section 13(4) of the

SARFAESI Act was issued. Paper publication on 20.08.2012 was effected for service of notice under Section 13(4) of the SARFAESI Act. The property was put to sale. A sale notice dated 17.04.2016 was published fixing the auction on 18.05.2016.

8. The petitioner approached the Debts Recovery Tribunal under Section 17(2) of the SARFAESI Act, praying for setting aside the sale notice dated 17.04.2016 and for restraining the respondent No.1 from conducting the sale of the property.

9. The Debts Recovery Tribunal dismissed the application holding that the subsequent purchaser, respondent No.2 herein, and the National Trust Housing Finance Limited, the respondent No.1, herein were necessary parties in the suit and therefore, decree passed in O.S.No.9286 of 2010 by the learned I Assistant Judge, City Civil Court, Chennai, was not binding on the Bank, since the mortgage had been created before the suit was filed in the year 2010. The Tribunal was of the view that in any event, the sale agreement does not give any title to the petitioner herein.

10. Aggrieved by the order of the Debts Recovery Tribunal, the petitioner filed an appeal before the Debts Recovery Appellate Tribunal, which has been dismissed by the order impugned in this Writ Petition.

11. Heard the learned counsel appearing for the petitioner.

12. It has been contended by the learned counsel appearing for the petitioner that the decree in O.S.No.9286 of 2010 would bind the Bank and therefore, the respondent No.1 bank cannot proceed with the auction of the area, which had been agreed to be sold by G.Paramasivam to the petitioner. This submission cannot be accepted.

13. The agreement to sell dated 01.09.2007 is not on record. Admittedly, G.Paramasivam, was the owner of the property in dispute and he has sold the property to respondent No.2 by a registered sale dated 19.01.2009.

14. The suit, for enforcing the agreement to sell dated 01.09.2007, was filed on 27.08.2010 i.e. after the sale deed dated 19.01.2009 and the suit was decreed ex parte. No Execution petition has been filed so far. What has now been attempted by the petitioner is the execution of the ex parte decree dated 31.05.2011, against G.Paramasivam Writ Jurisdiction cannot be used as a forum to execute an ex parte decree. The remedy of the petitioner is to take appropriate steps for executing the ex parte decree dated 31.05.2011 and a Writ Petition to restrain the respondent No.1 to sell the property under the SARFAESI Act, 2002, is not maintainable.

15. It is also open to the petitioner to initiate such steps to recover the amount alleged to have been paid by him to G.Paramasivam by taking appropriate proceedings in accordance with law.

16. The Writ Petition is devoid of merits and deserves to be dismissed and accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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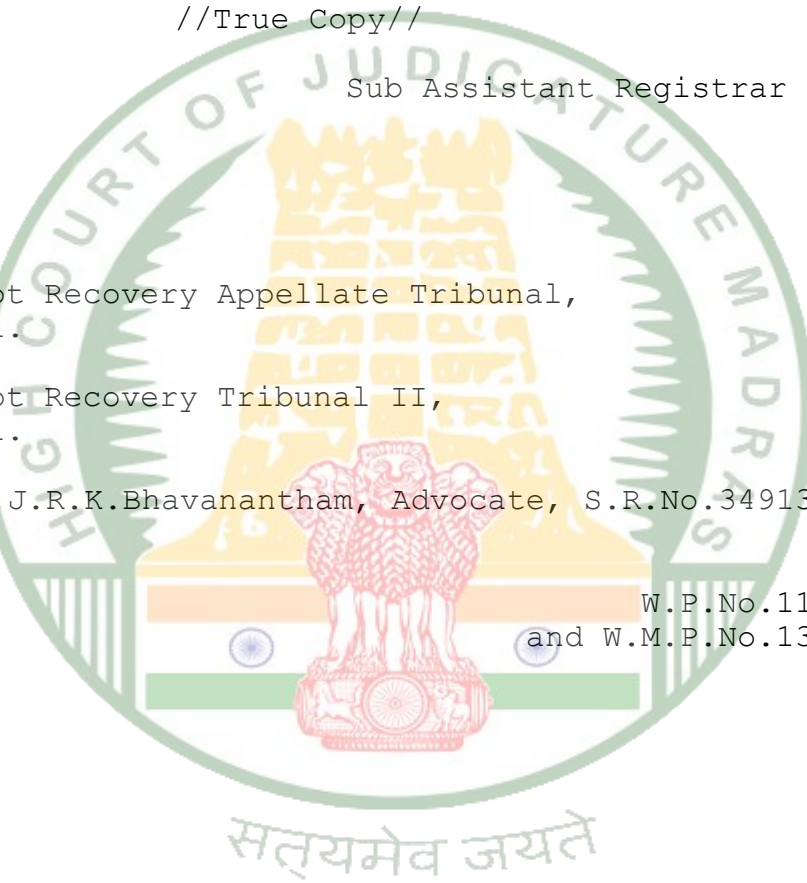
To

1. The Debt Recovery Appellate Tribunal,
Chennai.
2. The Debt Recovery Tribunal II,
Chennai.

+1cc to M/s.J.R.K.Bhavanantham, Advocate, S.R.No.34913

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CS/18/06/18



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