



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2018

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

CRP(PD) (MD) .No.1484 of 2013
and M.P.(MD) No.1 of 2013

The Branch Manager,
Vijaya Bank,
R.S.Puram Branch,
Coimbatore -2.

... Petitioner/Petitioner/1st Defendant

Vs.

M.Meenakshi Sundaram

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India against the order dated 19.07.2013 made in I.A..No.174 of 2013 in O.S.No.124 of 2010 on the file of the learned District Munsif, Nilakottai, Dindigul District.

For Petitioner	:	Mr.R.R.Kannan
For Respondent	:	Mr.D.Senthil

O R D E R

The first defendant in the suit in O.S.No.124 of 2010 on the file of the District Munsif Court, Nilakottai is the revision petitioner in this Civil Revision petition.

2. The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

2.i)The respondent in this revision petition, as plaintiff, has filed the suit in O.S.No.124 of 2010 on the file of the District Munsif Court, Nilakottai for permanent injunction restraining the defendants 1 and 2 in the suit from in any way interfering with his peaceful possession and enjoyment of the property.

2.ii) The case of the plaintiff is that the suit property belongs to the brother of the plaintiff's wife and that he had gifted the suit property to the plaintiff and his wife namely, Kamalam jointly on 28.08.1978. Though the suit property was gifted by them in favour of their grand son, it is stated that life interest was reserved in favour of the plaintiff and his wife and



therefore, the plaintiff has stated in the plaint that he has right to reside during his life time. It is not in dispute that the same property was proceeded against by the revision petitioner as the plaintiff's grand son mortgaged the property in favour of the bank, but failed to repay the amount of loan and the account of the plaintiff's grand son became NPA. It is stated that the plaintiff's possession cannot be disturbed by the Bank. The suit was contested by the revision petitioner by referring to the terms of the gift deed conferring absolute right in favour of respondent's grand son and on the basis of mortgage in favour of the Bank.

3. The petitioner has filed an Interlocutory Application in I.A.No.174 of 2013 for receiving additional written statement.

4. The said petition was dismissed by the trial court mainly on the ground that the revision petitioner has not pleaded any facts in defence and that the legal issue raised by way of additional written statement that can be raised without a plea in the written statement. The trial court has observed that Interlocutory Application was filed only to drag on the proceedings.

5. From the reading of the order passed by the lower court it can be seen that the scope of Order 8 Rule 9 of C.P.C has not been considered by the lower court.

6. The revision petitioner has filed the Additional written statement raising the specific issue regarding the maintainability of the suit in view of the specific bar under Section 34 of SARFAESI Act. Having regard to the nature of the plaint filed in this case, the maintainability of the suit depends upon the cause of action pleaded and the right, title, interest claimed by the plaintiff in the suit.

7. In such circumstances, the question whether the suit is barred by specific provisions particularly Section 34 of SARFAESI Act can be effectively gone into only if the plea is considered in the factual background of the case as found in the written statement. Hence, the conclusion of the trial Judge in rejecting the application is not sustainable. Having regard to the reasons given by the learned trial Judge, in this case no prejudice is likely to be caused to the plaintiff if the additional written statement is received.

8. In view of the fact that the application filed by the revision petitioner to receive additional written statement is justified, in the interest of justice, this Court is inclined to set aside the order passed by the lower court in dismissing the petition filed for receiving the additional written statement. Accordingly, the same is set aside. The additional written statement shall form



9. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition in M.P. (MD) No.1 of 2013 is closed.

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Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Nilakottai, Dindigul District.

+ 1 CC TO Mr.R.R.KANNAN, ADVOCATE IN SR No. 67412

CM

TE/JC/SAR-3 : 25/06/2018 : 3P/3C

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