

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

CIVIL MISCELLANEOUS APPEAL No.640 of 2018

JUDGMENT: (ORAL)

(Per Suresh Kumar Kait, J)

Vide the present appeal, appellants have challenged order dated 11.06.2018 passed in I.A.No.476 of 2018 in O.S.No.248 of 2018, whereby the said application filed by the appellants herein, under Order 39 Rule 1 read with Section 151 CPC seeking interim injunction against the respondents, has been dismissed.

2. Learned counsel appearing on behalf of the appellants submits that appellants are sons of the 1st respondent and the partition of the suit schedule property had taken place on 20.07.2007; despite that, the 1st respondent pledged the property documents to the 3rd respondent-bank and allowed the 4th respondent to take loan of crores of rupees. He further submits that the appellants are legally entitled to have share of the property; therefore, the 1st respondent could not have pledged the documents of the property to allow the 4th respondent to secure loan from the 3rd respondent-bank.

3. Undisputedly, both the appellants are siblings and are children of respondents 1 and 2. They filed suit for partition of suit schedule property into four equal parts for equal distribution among themselves and respondents 1 and 2. Ex.P.1 is the notice dated 12.02.2018 issued

by Advocate-Commissioner and that was addressed to 10 individuals. Appellants are not recipients of the said notice. As per the notice and as per the averments in paragraphs 13, 14, 16 and 17 of the affidavit of appellant No.1 filed in support of the application, 3rd respondent-bank has initiated proceedings for attachment and sale of the suit schedule property under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short “the Act”).

4. The prayer in the aforesaid application against the respondents was to restrain them from interfering with the possession of the appellants over the suit schedule property.

5. As per Section 34 of the Act, a civil court is specifically barred from granting any injunction in respect of any action taken or to be taken by the bank and its officers under the Act. Thus, there is specific bar for granting the relief in view of the judgment of this Court in *ICICI Bank Ltd. v. V.T. Prakash and others*¹.

6. As per the case of the appellants in the plaint, the suit schedule property belongs to joint Hindu family with the 1st respondent as its *Kartha*. In the year 2011, the 1st respondent mortgaged the property to the 3rd respondent-bank as guarantor for the loan obtained by third parties to the suit. Rest of the contents of the application indicates complete cordial relationship among the joint family members and how

¹ 2003 (3) ALD 369

parents and children developed the property. The acts of *Kartha* bind the joint Hindu family unless it is shown that they are against law for detriment of members of joint Hindu family. There are no such averments in the affidavit of appellant No.1. Further, as per the averments in the affidavit at page 7, the property is still assessed in the name of the 1st respondent as per municipal records. The case of the appellants is that the money contributed by the 2nd respondent and with the money earned by the 1st respondent from his business and using some part of money earned from sale of ancestral property, the 1st respondent purchased and constructed the suit schedule property; thus the said property stood in the name of the 1st respondent.

7. In view of the facts and circumstances recorded above, the trial court has observed that the application is vague concerning the amounts of money derived from ancestral property invested in the suit schedule property; moreover, even according to the appellants, they have got only half share, but they claimed injunction against the entire building; thus, appellants seek injunction for the share of respondents 1 and 2 despite the fact that they are opposite parties and 1st respondent mortgaged the property to the 3rd respondent; however, appellants claim is towards an unregistered partition deed dated 20.07.2007.

8. In that view of the matter, without commenting on the merits and since the appellants herein have filed the aforesaid suit against

respondents 1 and 2, who are their parents, we find no ground to interfere with the order under challenge.

9. Civil Miscellaneous Appeal is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the writ petition stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

July 03, 2018
MRR

