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HIGH COURT OF CHHATTISGARH, BILASPUR

(Arising out of order dated 26-3-2019 passed by the District Judge, Mahasamund, in civil suit No.H-03A/2019)

FA No. 216 of 2019

1. Harish Chandrakar S/o Shiv Kumar Chandrakar Aged About 32 Years

2. Lomesh Chandrakar S/o Shiv Kumar Chandrakar Aged About 30 Years

3. Shiv Kumar Chandrakar S/o Bhushan Lal Chandrakar Aged About 53 Years

4. Smt. Lata Chandrakar W/o Shiv Kumar Chandrakar Aged About 51 Years

5. Smt. Urvashi Chandrakar W/o Basant Chandrakar Aged About 32 Years

   All are R/o Village Saradhi, Post Belsonda, Tahsil Mahasamund, District Mahasamund Chhattisgarh.

6. Narendra Chandrakar S/o Shersingh Chadrakar Aged About 62 Years

7. Smt. Amrita Chandrakar W/o Narendra Chandrakar Aged About 58 Years

8. Nidhi Chandrakar D/o Narendra Chandrakar Aged About 36 Years

   Appellants No.6 to 8 are R/o Village Churki, Post Mohandi, Tahsil Bagbehra, District Mahasamund Chhattisgarh.

---- **Appellants**

Versus

1. Tej Prakash Chandrakar S/o Bhushan Lal Chandrakar Aged About 42 Years

2. Smt. Ratna Chandrakar W/o Tej Prakash Chandrakar Aged About 41 Years

Both are R/o Ganjpara, Mahasamund Tahsil- Mahansund, District Mahasamund Chhattisgarh.

3. Tata Capital Financial Service Limited Through Its Head/ Manager/Director/Authorized Officer (who so ever competent), Corporate Identity No. U67100M H 2010 PLC 210201, First Floor, Pujari Chamber, N.H, No. 43, Panchpadi Naka, Raipur District Raipur Chhattisgarh.

---- Respondent

For Appellants Shri Malay Shrivastava, Advocate

Hon'ble Shri P.R. Ramachandra Menon, CJ
Hon'ble Shri Prashant Kumar Mishra, J

Judgment On Board
By
Prashant Kumar Mishra, J.

08/05/2019

1. This is plaintiffs appeal challenging the order passed by the trial Court rejecting the plaint under Order 7 Rule 11 (a) (d) of the Code of Civil Procedure, 1908 (*for short 'the CPC'*).

2. The facts stated in the memo of appeal and the order impugned would reveal that the the plaintiff and the defendants No.1 & 2 entered into an agreement for purchase of the suit land bearing khasra No.167/1/11/2 area 2000 sq.ft.; khasra No.167/1/8 area 1500 sq.ft.; and khasra No.167/1/2 area 1500 sq.ft. (in total 5000 sq.ft.) from Maganlal, Lalita and Reenu Chandrakar, however, subsequently the defendants No.1 & 2 alone purchased the property despite having

obtained financial assistance from the plaintiffs for purchasing the suit property.

3. The defendants No.1 & 2 thereafter, mortgaged the property with the defendant No.3 financial institution by way of security for the loan transaction and as soon as this came to the notice of the plaintiffs the present suit has been filed.

4. The learned trial Judge has dismissed the suit on the ground that the suit is barred under the provisions of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (*for short 'the Act, 2002'*).

5. Referring to a Division Bench judgment of the Calcutta High Court rendered in the matter of **Kaaiser Oils Private Limited v Allahabad Bank**[1], learned counsel appearing for the appellants would argue that since the suit is one of civil nature it is maintainable under Section 9 of the CPC. Learned counsel would also argue that the defendants No.1 & 2 have played fraud with the plaintiffs, therefore, such plea being not adjudicatable by the Debts Recovery Tribunal (*for short 'the DRT'*), Civil Court has jurisdiction to try the suit.

1 (2017) 4 CalHCN 410 (DB)

6. To advert to the arguments raised by the learned counsel for the appellants it would be necessary to refer to Section 34 of the Act, 2002 which is reproduced hereunder :

> **34. Civil Court not to have jurisdiction.**--No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

7. The language employed under Section 34 of the Act, 2002 clearly provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of ***any matter***, which a DRT is empowered to determine and no injunction shall be granted by any court in respect of any action taken or ***to be taken*** in pursuance of any power conferred by or under this Act.

8. Admittedly, the plaintiffs are not privy to the contract of loan transaction between the defendants No.1 & 2 and the financial institution.

9. Plaintiff also did not own the property at any point of time either in exercise of his successory title or otherwise. There being no prior document of title in favour of plaintiff and he being a stranger to the transaction between the defendants No.1 & 2 and the financial institution, the plaintiff has absolutely no locus to maintain the suit and further to seek a declaration, which, if allowed, would effect the financial institution's right under the contract of mortgage. It is this right of the financial institution, which is enforceable under the Act, 2002, therefore, any decree in favour of the plaintiff would adversely effect the right of financial institution and, as such, the suit has rightly been held to be barred under Section 34 of the Act, 2002 and dismissed by the trial Court under Order 7 Rule 11 (a) (d) of the CPC.

10. As a sequel, the instant first appeal, *sans substratum*, is liable to be and is hereby dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Prashant Kumar Mishra)
Judge

Gowri