

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.No.1134 of 2008
and A.Nos.4782 to 4784 of 2018

J.Sekar

.. Plaintiff

Vs.

1. Indian Overseas Bank
Assets Recovery Management Branch,
Central Office Annexe Building,
I Floor, 763, Anna Salai,
Chennai-600 002 rep. by
its Authorised Officer.

2. M/s.Dinakar Trading Company
by its Proprietor
Mr.A.Balaganesan,
S/o.Mr.M.Iyyasamy Nadar,
No.25, Anna Pillai Street,
Chennai-600 001.

3. B.Subash

4. S.Venkateswaran

5. S.P.N.Sathyamurthy

6. S.P.N.Krishnamurthy

.. Defendants

* * *

Prayer : Civil Suit filed under Order IV, Rule 1 of Original Side Rules read with Order VII, Rule 1 of the Code of Civil Procedure praying for a

decree and judgment :

(a) for declaration, declaring that the Sale Deed dated 27.04.2005, registered as Document No.1121 of 2005 in Book I in the office of the Sub Registrar, Mylapore, executed by the second defendant and others in favour of the third defendant herein, in so far as it relates to the suit schedule mentioned property, as sham and nominal ;

(b) for a declaration, declaring that the Power of Attorney dated 18.02.2008, registered as Document No.325 of 2008 in Book IV in the office of the District Registrar, South Chennai, executed by the third defendant in favour of the fourth defendant as null and void in so far as it relates to the suit schedule mentioned property ;

(c) for a consequential declaration, declaring that the Sale Deed dated 20.02.2008, registered as Document No.379 of 2008 in Book I in the office of the Sub Registrar, Mylapore, executed by the fourth defendant in his capacity as Power Agent of the third defendant in favour of the fifth and sixth defendants as null and void, sham and nominal and not binding on the plaintiff in so far as it relates to the suit schedule mentioned property ;

(d) consequently direct the fifth and sixth defendants herein to handover vacant possession of the suit schedule mentioned property to the plaintiff herein ;

(e) directing the fifth and sixth defendants herein to pay damages for use and occupation at Rs.1,00,000/- per month from the date of plaint till handing over possession ;

(f) direct the first defendant to pay interest at commercial rate of interest towards the entire sale consideration held by them from the

date of issuing the Sale Certificate to till the date the plaintiff is put vacant peaceful possession of the suit property ;

(g) for the cost of the suit ; and

(h) for any other relief or reliefs as this Court may deem fit and proper.

* * *

For Plaintiff : Mr.K.V.Babu

For Defendants : Mr.F.B.Benjamin George for D1

Mr.R.Balachandran for D2

Mr.R.Thiagarajan for DD 3 and 4

Mr.S.Rajendrakumar for DD 5 and 6

J U D G M E N T

The auction purchaser in the proceedings conducted under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short, "the SARFAESI Act") has laid this suit after the confirmation of the sale challenging the sale deed executed by the borrower during the subsistence of the mortgage in favour of the third defendant and also for declaring the sale deeds as *null and void*, which were subsequently executed by the third defendant, through the fourth defendant, who is his Power of Attorney, in favour of the fifth and sixth defendants.

2. In addition to the above prayer, the plaintiff had also asked for damages for use and occupation by the fifth and sixth defendants. However, the relief against the first defendant to pay interest at the commercial rate of interest towards the sale consideration held by them from the date of sale certificate till the date of giving vacant possession to the plaintiff was given up by the plaintiff.

3. The case of the plaintiff is as follows :

(i) The first defendant - the Indian Overseas Bank, Assets Recovery Management Branch (in short, "IOB") had issued a tender-cum-auction sale notice for the conduct of auction on 24.03.2007 (Ex.P.8) through its Authorised Officer, pursuant to the proceedings initiated under Section 13 of the SARFAESI Act. As per the said tender notice, the upset sale value of the asset was fixed at Rs.1.60 Crores. The said proceedings were the result of the second defendant Dinakar Trading Company, who availed facilities from the first defendant and defaulted in repayment resulting in the account becoming a Non Performing Asset leading to the issuance of the notice under Section 13(2) of the SARFAESI Act on 10.08.2002. The symbolic possession of the property was taken over by the first defendant in exercise of the

powers conferred under Section 13(4) of the SARFAESI Act on 02.12.2003 and an order under Section 14(1) and (2) of the said Act was also obtained in Crl.M.P.No.120 of 2007 on 20.01.2007 from the Chief Metropolitan Magistrate, Egmore, Chennai, and an Advocate Commissioner was appointed for taking possession of the property. After obtaining the evaluation report, the tender-cum-auction sale notice was published. In the tender notice itself, it was stated that the second defendant/borrower has dealt with the property, when the charge was in force by way of sale deed dated 27.04.2005 conveying the same in favour of the third defendant. The plaintiff was declared as the highest bidder as per the conditions laid down under the tender-cum-auction notice and the condition to pay 25% of the bid amount, after deducting EMD of Rs.15,00,000/- was also complied with.

(ii) While so, the third defendant, who is the purchaser of the property from the second defendant on 27.04.2005 and not a party to the SARFAESI proceedings, had filed an application in S.A.No.97 of 2007 on the file of the Debts Recovery Tribunal-II, Chennai (in short, DRT-II), in which, a conditional order dated 12.03.2007 was passed directing the third defendant to deposit a sum of Rs.67,20,520/- on or before 23.03.2007 with a further direction to deposit a sum of Rs.30,60,138/-, being the interest, within a period of three weeks with

the said Recovery Officer of the DRT.

(iii) Against the said conditional order passed by the Presiding Officer, DRT-II, the third defendant preferred an appeal before the DRAT in I.A.No.228 of 2007 in I.N.No.168 of 2007. The DRAT also granted an order of interim stay of the sale by passing a conditional order on 22.03.2007 directing the third defendant to deposit certain amounts.

(iv) Aggrieved by the said order passed by the DRAT, the first defendant bank moved a revision in C.R.P.(PD) No.839 of 2007 before this Court invoking Article 227 of the Constitution. This Court had permitted the sale to proceed, however, the confirmation of the sale was stayed until further orders. Accordingly, the plaintiff, who is the highest bidder, had remitted 25% of the bid amount with the first defendant Bank. Thereafter, CRP (PD)No.839 of 2007 was taken up and a final order was passed on 21.07.2007 allowing the revision thereby striking off the proceedings initiated by the third defendant in S.A.No.97 of 2007 on the file of the DRT-II.

(v) Aggrieved by the order passed by this Court in the revision petition, SLP (Civil)No.12617 of 2007 was filed by the third defendant before the Hon'ble Supreme Court. On 06.08.2007, the Hon'ble Supreme Court passed once again a conditional order directing the

third defendant, who was the appellant, to deposit the amount of debt calculated with interest till that date before the Supreme Court within a period of four weeks and if the amount is not deposited, the SLP shall stand automatically dismissed.

(vi) Having suffered the said order, the third defendant made an attempt to deposit the said amount. However, he could not deposit on or before the date fixed by the Hon'ble Supreme Court and he chose to deposit it before the first defendant Bank. But, as the conditional order granted by the Hon'ble Supreme Court was not complied with, the SLP was dismissed on 07.12.2007 and the Bank was directed to refund the amount deposited by the third defendant. Thus, the proceedings initiated by the third defendant had attained finality.

(vii) The plaintiff, thereafter, deposited the balance amount of the sale consideration with the first defendant in terms of the original auction sale notice and requested the first defendant to handover the physical possession of the property along with the sale certificate. The Bank had issued the sale certificate on 31.01.2008 without handing over the physical possession of the schedule mentioned property, though there was a specific mention in the sale certificate stating that the suit schedule property has been handed over to the plaintiff. Though the said fact was disputed by the plaintiff, the first defendant

could not handover physical possession of the property at the time of issuing the sale certificate dated 31.01.2008. Admittedly, the sale was confirmed on 11.01.2008. As the first defendant Bank could not secure possession for the plaintiff, the plaintiff applied for encumbrance certificate only to know that the property was held in possession by some third parties.

(viii) The third defendant, through his Power of Attorney - the fourth defendant, had sold the property in favour of the fifth and sixth defendants herein, on 20.02.2008. Thus, the sale deed in favour of the fifth and sixth defendants covered 50% of the land with the ground floor building and the sale of the second defendant in favour of the third defendant and sale by the third defendant through the fourth defendant in favour of the fifth and sixth defendants are all fraudulent transfers and not binding on the secured creditor, as the same were executed during the subsistence of the mortgage and the proceedings were pending before the appropriate forum. Therefore, it is contended that these sales are not binding on the plaintiff, who is the purchaser in the SARFAESI proceedings. On the date of filing of the suit, the fifth and sixth defendants are in possession of the property, having purchased the same after the confirmation of sale in favour of the plaintiff.

(ix) As the fifth and sixth defendants, who claimed to be in possession of the property pursuant to the sale deed executed by the third defendant through the fourth defendant after the confirmation of the sale in favour of the plaintiff, the sale itself is *void* much less their possession is only as trespassers. Hence, the suit.

4. The following issues were framed for consideration by this Court on 01.12.2010 in this suit :

- (1) Whether the sale deed dated 27.04.2005 executed by the second defendant and others in favour of the third defendant is a sham and nominal document in so far as it relates to the suit schedule property ?
- (2) Whether the Power of Attorney dated 18.02.2008 executed by the third defendant in favour of the fourth defendant is full and void in so far as it relates to the suit schedule property ?
- (3) Whether the sale deed dated 20.02.2008 executed by the fourth defendant in his capacity as power agent of the third defendant in favour of the defendants 5 & 6 without divulging the inherent defects of the property is a sham and nominal document ? If it is so whether it will not bind upon the plaintiff insofar as it relates to the suit schedule property ?

- (4)Whether the plaintiff is entitled to have the vacant possession of the suit schedule property from the hands of the defendants 5 and 6 ?
- (5)Whether the plaintiff is entitled to have the relief of damages to the extent of Rs.1,00,000/- for use and occupation of the suit schedule property per month till date of handing over the possession by the defendants 5 and 6 ?
- (6)Whether the plaintiff is entitled to the relief of declaration that he is the owner of the entire first floor of superstructure with 50% of UDS when there is no first floor in the suit property ?
- (7)Is the suit maintainable since 50% UDS alone has been mortgaged by the third defendant in favour of the first defendant ?
- (8)Is the plaintiff a bonafide purchaser of suit property ?
- (9)Is the suit suffering from non-joinder of necessary ?
- (10)To what other reliefs, are the parties entitled to ?

5. The following additional issues were also framed by this Court on 28.08.2018 :

- (1)Whether the suit is maintainable in the light of the bar set out under Section 34 of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Securities Interest Act, 2002
(SARFAESI) ?

(2)Whether the suit claim is to be accepted in the light of the provisions of Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI) ?

(3)What is the effect of non-registration of sale certificate dated 30.01.2008, file under Ex.P.17 ?

6. The additional issue Nos.1 and 2 framed by this Court go to the root of the case, as additional issue No.1 is with respect to the maintainability of the suit, in the light of the bar under Section 34 of the SARFAESI Act and additional issue No.2 is with respect to the acceptance or otherwise of the suit claim in the light of Section 13(8) of the SARFAESI Act. Hence, both the additional issues No.1 and 2 are dealt with in the first instance.

Additional Issue No.1 – Maintainability of the suit :

7. It is to be stated that Section 34 of the SARFAESI Act is relevant for the purpose of this suit and the said provision reads as follows :

"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)."

Section 34 deals with the bar of civil court 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 the said 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 the Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Learned counsel for the second defendant submitted that a reading of Section 34 of the SARFAESI Act would show that the entire dispute involved in this suit falls within the jurisdiction of the DRT to be adjudicated under Section 17 of the SARFAESI Act. The plaintiff, who is having cause of action as to failure of delivery of vacant possession by the first defendant ought to have approached the DRT instead of filing the suit, which is barred by Section 34 of the SARFAESI Act. The learned

counsel for the second defendant also placed reliance on the following decisions :

- (1)Mardia Chemicals Ltd. & Others V. Union of India & Others, (2004) 4 SCC 311 ;
- (2)M/s.Transcore V. Union of India and Another, (2008) 1 SCC 125 ;
- (3)United Bank of India v. Satyawati Tondon and Others, (2010) 8 SCC 110 ;
- (4)Jagdish Singh V. Heeralal and Others, (2014) 1 SCC 479 ;
- (5)ICICI Bank Ltd. V. P.Veerendar Chordia, CDJ 2010 MHC 3371 ; and
- (6)A.Jayakumar V. The Chief Manager, PNB, CDJ 2017 MHC 3547.

8. The above prohibition of civil courts jurisdiction under Section 34 of the SARFAESI Act is only with respect to any matter, which the DRT or the DRAT is empowered by or under the said Act to determine an issue, whereas, in the present suit, the relief that has been brought for can only be decided by a civil court as it involves the title of the subsequent purchasers and also recovery of possession from them, which cannot be decided in a summary manner. In this regard, learned counsel for the plaintiff placed reliance on the following decisions :

- (1) Dhulabhai and Others V. State of M.P. and another, AIR 1969 SC 78 ;
- (2) Pyramid Saimira Theatre Ltd. V. S.Murugan and Others, 2009 (1) L.W. 866 ; and
- (3) Mardia Chemical Ltd. & Others V. Union of India & Others, (2004) 4 SCC 311.

8.1. In **Dhulabhai and Others V. State of M.P. and another, AIR 1969 SC 78**, the Hon'ble Supreme Court held as follows :

"35. Neither of the two cases of Firm of Illuri Subayya or Kamla Mills can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows:

(1) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute

creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegality collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

8.2. A Division Bench of this Court in **Pyramid Saimira Theatre**

Ltd. V. S.Murugan and Others, 2009-1-L.W. 866 held as

hereunder :

"33. The present suit does not merely assail the transactions by the bank but a whole series of actions to which the bank is not party including the assignment by the second defendant to the partnership firms, the execution of sub-mortgage by the firm and the execution of lease. The transactions assailed does not terminate with the first transaction of assignment by the bank to the second defendant. The subsequent transactions cannot be a subject of any adjudication by the Debt Recovery Tribunal. If the transaction had stopped with the discharge of loan to the bank, neither the bank nor any of the shareholders could have had any grievance and it could have been perceived as the most beneficial act. On the other hand, the bone of contention has been only the action of the second defendant that has resulted in not merely displacing possession of the theatre premises from the 7th defendant company but also makes possible the assumption of control by the second defendant in anafarious manner. It is veritably a plausible perception that the second defendant could not have lawfully assumed the prospect of control over the asset of the company viz. Cinema Theatre without shedding a single paise by playing with the money of other parties and continuing the indebtedness of the company. The right which a "private transferee" obtains from the bank by virtue of assignment under Section 13(4) Clause (a), cannot extend to have a relief under the SARFAESTI Act, unless he himself is a secured creditor in the manner defined under Section 2(zd) of the said Act. We have already seen neither the second defendant nor the partnership firm could describe itself as such nor indeed Lavanya could have any relief pursued under the SARFAESI Act in its assumed right of subrogation or sub-mortgage respectively.

34. * * *

35. Above all, when the action of the second defendant is questioned by means of suits and there exists ample prima facie proof that the transactions are a fraudulent ploy to wrest control of the business of the 7th defendant and persisting the indebtedness of the company, it is not possible to accept the contention that the civil Court's jurisdiction is ousted. The Courts have held that exclusion of jurisdiction of civil Court is not to be readily inferred, unless the statute excludes the jurisdiction giving the finality to the issues raised before it. The validity of the transactions and alleged fraud have relevance to the series of documents that have been generated by the second defendant to route to the partnership firm through assignment and through instruments of debts by sub-mortgage and lease, all of which, cannot be considered by the Debt Recovery Tribunal. It is therefore not possible to give in to the proposition canvassed by the counsel for the second defendant. It is not merely a plea of fraud or the alleged non-est nature of transactions canvassed by the plaintiff that ousts the jurisdiction of the Debt Recovery Tribunal and vests the jurisdiction of the Civil Court. It is the series of actions that the second defendant had indulged in where he could not have any relief before the Tribunal that gives the civil Court its jurisdiction.

36. A conjoint reading of several decisions could be paraphrased to set down the following propositions of law with regard to the exclusion civil Court jurisdiction in respect of matters covered by the SARFAESI Act and the Recovery Debts due to Banks and Financial Institutions Act, 1993 (RDB Act).

37. The approach shall be first to ascertain the particular action that is complained of. If the impugned action is at the instance of financial institution, the next question is whether the remedy for the act complained of, is available under the SARFAESI Act itself. If fraud is complained against the financial institution, it

will not immediately take the issues of adjudication outside the purview of the SARFAESI Act or RDB Act. However, if the act is illegal and fraud has been practised on the Tribunal itself, the remedy will be always available through the civil courts. Ouster clause in any statute shall be strictly construed. Section 34 of SARFAESI Act and Section 18 of RDB Act shall be so construed to invest in the Tribunal jurisdiction in every matter which is directly connected with indebtedness to the financial institutions itself. If the relief does not pertain to the indebtedness and the mode of enforcement of debt by a "secured creditor" defined under the SARFAESI Act or a "financial institution" defined under RDB Act, there could be no exclusion of jurisdiction."

8.3. The Hon'ble Apex Court in **Mardia Chemical Ltd. & Others**

V. Union of India & Others, (2004) 4 SCC 311, held as follows :

"51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages. We find such a scope having been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely, *V. Narasimhachariar* [AIR 1955 Mad 135] , AIR at pp. 141 and 144, a judgment of the learned Single Judge where it is observed as follows in para 22:

"22. The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor

can come to the court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly disclose a fraud or irregularity on the basis of which relief is sought: *Adams v. Scott* [(1859) 7 WR 213, 249]. I need not point out that this restraint on the exercise of the power of sale will be exercised by courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (See Ghose, Rashbehary: *Law of Mortgages*, Vol. II, 4th Edn., p. 784.)"

9. The suit reliefs made by the plaintiff are outside the jurisdiction of the DRT and the disputes raised by the plaintiff cannot be decided by any Tribunal or authority. Hence, the jurisdiction of the civil court cannot be taken away. Earlier, as per Ex.P.10, the third defendant had filed S.A.No.97 of 2007 on the file of the DRT-II attempting to stop the sale of the suit property by the Recovery Officer-I. Though the said application was entertained by the DRT and also by the DRAT, a challenge by the first defendant Bank in C.R.P.(PD)No.839 of 2007 seeking to strike off the pleadings of the

third defendant was allowed. The reason given by this Court was that the third defendant, who had purchased the property during the subsistence of the mortgage with the first defendant, cannot be a bonafide purchaser. Paragraph 7 of the said order dated 21.07.2007 reads as follows :

"7. But a perusal of the typed set of papers would go to show that the respondent is not a bonafide purchaser since the very same counsel has been appearing in all the proceedings before this Court, DRT and other forums and he has drafted the Sale Deed also and therefore, even during arguments, he was compelled to admit that he is not a bona fide purchaser. Further, the application of the respondent before the DRT itself is not maintainable since in the present case the measure taken by the secured creditor is under Section 13(4) of the Act and possession has also been taken on 1.12.2003. Further, after sale notice is issued, the only remedy to the borrower to stop the sale is under Section 13(8) of the Act. As per the said provision the borrower is entitled to pay the entire demand amount with cost, interest, etc., and thereupon, the secured creditor is liable to stop the sale, which provision has not been invoked by the respondent herein. Though the respondent expressed his willingness to deposit the amounts, the amount was not paid or deposited."

Therefore, the Court struck off the pleadings of the third defendant as the same was not maintainable before the DRT. This Court also had found that the only remedy open to the borrower to stop the sale was under Section 13(8) of the SARFAESI Act, by depositing all the dues

with all costs, charges and expenses incurred by the secured creditor at any time before the date fixed for sale or transfer of the secured asset. The order specifically mentions that though such opening was available to the borrower and the third defendant was also given an opportunity to deposit the amount before the DRT and the DRAT, admittedly, the same was not done. Therefore, the borrower, namely, second defendant had not availed the benefits under Section 13(8) of the Act. Challenge of the third defendant, who is a purchaser pending proceedings, without such deposit contemplated under Section 13(8) of the SARFAESI Act cannot be maintained before the DRT or the DRAT. When that being the case, it would not lie in the mouth of the third defendant to say that the suit is not maintainable and the plaintiff has to workout his remedies only before the DRT.

10. Besides it is only the cause of action, which has to be looked for the purpose of determining the maintainability of the suit. The plaintiff had based his cause of action on the order passed by this Court and also confirmed by the Hon'ble Supreme Court. It is not in dispute that the plaintiff had purchased the suit property in an auction brought out by the first defendant Bank. It is also not in dispute that the sale certificate was issued, which is also confirmed later, contains a

clause that the possession had already been handed over to the plaintiff. Even if it is assumed for a moment that the plaintiff did not take actual physical possession, the suit is now laid for only recovery of possession. Admittedly, the fifth and sixth defendants have entered into the suit premises after the confirmation of sale in favour of the plaintiff and based on their own alleged purchase on 20.02.2008, which is subsequent to the confirmation of sale. Hence, the objection raised by the defendants that the suit is barred under Section 34 of the SARFAESI Act for want of jurisdiction cannot be sustained.

11. The contention of the learned counsels for the defendants that the suit is barred under Section 34 of the SARFAESI Act cannot be accepted as the reliefs, which are now pressed for by the plaintiff, are for declaration that the sale deed dated 27.04.2005, Power of Attorney dated 10.02.2008 and sale deed dated 20.02.2008 are *void* and for consequential recovery of possession from the fifth and sixth defendants. The learned counsels for the defendants are not able to show as to how this relief is connected with any of the provisions of the SARFAESI Act. The reliefs claimed by the plaintiffs do not pertain to any security interest created in favour of any secured creditor. As no proceedings are pending before the DRT, the suit could not be said

to be barred under Section 34 of the SARFAESI Act. The question of plaintiff filing any claim against the defendants in DRT would not arise, as there is no petition pending before the DRT and the fifth and sixth defendants are not parties before the DRT.

12. It is also pertinent to note that the borrower had not challenged the sale till today. It is to be noted that prior to the execution of Ex.P.20-sale deed dated 20.02.2008, sale certificate was issued in favour of the plaintiff by the first defendant on 31.01.2008. When no independent proceedings can be initiated even by a borrower before the DRT, a court auction purchaser can proceed only under common law remedy. Merely because the second defendant has stated in the written statement that he will take separate action challenging the auction before the DRT and admittedly, no action is taken till today, it cannot be said that the jurisdiction of civil court stands ousted.

12.1. Thus, additional issue No.1 is answered in favour of the plaintiff and against the defendants.

Additional Issue No.2 :

13. With respect to the additional issue No.2, Section 13(8) of the SARFAESI Act provides that if the dues of the secured creditor together with all costs, charges and expenses incurred by it are tendered to the Bank at any time before the date fixed for sale or transfer, the secured asset shall not be sold by the secured creditor and also no further steps shall be taken by it for transfer or sale of that asset. In this case, the person aggrieved by the action taken by the first defendant Bank should be only the borrower - the second defendant. The second defendant contended that as a borrower, he is having a subsisting contractual right under Section 13(8) of the SARFAESI Act to deposit the entire accrued loan amount directly to the first defendant. However, it is not done. Admittedly, in this case, the second defendant, who is the borrower, also had not challenged any of the proceedings under the SARFAESI Act right from the initiation of notice under Section 13(2) followed by 13(4), wherein, symbolic possession has been taken as contemplated under Section 17(1). It is also not the case of the borrower - the second defendant that he was ready and willing to tender all the dues to the secured creditor in order to save his secured asset from being brought to sale. The borrower had not taken any steps by filing necessary application before the DRT

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challenging the action of the first defendant Bank. On the contrary, to defeat the rights of the secured creditor, he had only sold the property to the third defendant and it is only the third defendant, who had initiated action for the stoppage of the sale, which was dismissed by this Court and confirmed by the Hon'ble Supreme Court, as evidenced by Exs.P.10 and P.11. In fact, the Hon'ble Supreme Court had directed the Bank to refund whatever amount, that has been deposited by the third defendant, while dismissing the SLP on 07.12.2007 as per Ex.P.13. It is also categorically admitted by D.W.2 that no review petition was filed after the dismissal of the SLP. That apart, in the interregnum, the sale was confirmed on 11.01.2008 as per Ex.P.15 and the sale certificate was issued on 31.01.2008 as per Ex.P.17. The said action of the first defendant Bank was questioned neither by the second defendant nor by the third defendant.

14. In this regard, paragraph 4 of the proof affidavit of the second defendant is relevant and the same reads as follows :

"4. This defendant respectfully submit that only on 16-02-2012 this defendant and the said Mr.Balaganesan, got the knowledge about the fraudulent illegal and void sale certificate issued by the first defendant without any right whatsoever in the name of the plaintiff dated 31-01-2008 with reference to the suit

schedule property. Hence, the said Balaganesan is taking separate steps to get the sale certificate set aside (sic) by initiating independent action against the first defendant and the plaintiff."

15. While so, in the cross-examination, he had specifically deposed contrary to the written statement stating that "I have not taken any independent action against the first defendant and the plaintiff as stated in paragraph 4 of my written statement". The only person, who can challenge the sale is the second defendant as his property was given as security and brought to sale. In fact, the Hon'ble Apex Court also had given an opportunity to the third defendant to pay the said amount of Rs.1.71 Crores without prejudice only with a view to save the property from sale. However, even the said opportunity was lost, as the third defendant did not deposit or tender the amount within the time stipulated before the Registry of the Hon'ble Supreme Court. Therefore, while dismissing the SLP, the said amount deposited with the Bank contrary to the order of the Hon'ble Supreme Court was directed to be refunded or returned to the third defendant. It was submitted by the counsel for the third defendant that the Bank had not returned/refunded the said sum as directed by the Hon'ble Supreme Court. Even if that is so, the third defendant

cannot canvass his demands in this suit, as it is a dealing between the Bank and the third defendant. Thus, the right of redemption, if any, that the third defendant had, was rejected by the Hon'ble Supreme Court.

16. Considering the above facts, it is to be stated that the remedy available under Section 13(8) of the SARFAESI Act to the mortgagor is lost or such situation does not even arise for consideration in this case. As on the date of the order passed by the Hon'ble Supreme Court, there was no amount available to the loan account as contemplated under Section 13(8) of the said Act to cancel the sale. On the other hand, after the dismissal of the SLP, the auction was confirmed in favour of the plaintiff and the sale certificate was issued under Ex.P.17, which is also not challenged. As there is no challenge to the sale, in which, the plaintiff had purchased the property, till today, the remedy under Section 13(8) of the SARFAESI Act is not available to the second and third defendants and the sale has become final. The argument of the counsels for the respondents that taking of possession under Section 13(4) of the SARFAESI Act must mean actual physical possession or otherwise no transfer by way of sale can be made as possession of the secured asset continued to

be with the borrower, when only symbolic possession is taken cannot be sustained as Section 13(4)(a) contemplates only the right to transfer. Therefore, the right to transfer could be by way of assignment or sale. In this regard, paragraph 74 of **M/s.Transcore V. Union of India, (2008) 1 SCC 125** would be relevant to refer to, which reads thus :

"74. Keeping the above conceptual aspect in mind, we find that Section 13(4) of the NPA Act proceeds on the basis that the borrower, who is under a liability, has failed to discharge his liability within the period prescribed under Section 13(2), which enables the secured creditor to take recourse to one of the measures, namely, taking possession of the secured assets including the right to transfer by way of lease, assignment or sale for realising the secured assets. Section 13(4-A) refers to the word "possession" simpliciter. There is no dichotomy in sub-section (4-A) as pleaded on behalf of the borrowers. Under Rule 8 of the 2002 Rules, the authorised officer is empowered to take possession by delivering the possession notice prepared as nearly as possible in Appendix IV to the 2002 Rules. That notice is required to be affixed on the property. Rule 8 deals with sale of immovable secured assets. Appendix IV prescribes the form of possession notice. It inter alia states that notice is given to the borrower who has failed to repay the amount informing him and the public that the bank/FI has taken possession of the property under Section 13(4) read with Rule 9 of the 2002 Rules. Rule 9 relates to time of sale, issue of sale certificate and delivery of possession. Rule 9(6) states that on confirmation of sale, if the terms of payment are complied with, the authorised officer shall

issue a sale certificate in favour of the purchaser in the form given in Appendix V to the 2002 Rules. Rule 9(9) states that the authorised officer shall deliver the property to the buyer free from all encumbrances *known to the secured creditor or not known to the secured creditor*. (emphasis supplied) Section 14 of the NPA Act states that where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred, the secured creditor may, for the purpose of taking possession, request in writing to the District Magistrate to take possession thereof. Section 17(1) of the NPA Act refers to the right of appeal. Section 17(3) states that if DRT as an appellate authority after examining the facts and circumstances of the case comes to the conclusion that any of the measures under Section 13(4) taken by the secured creditor are not in accordance with the provisions of the Act, it may by order declare that the recourse taken to any one or more measures is invalid, and consequently, restore possession to the borrower and can also restore management of the business of the borrower. Therefore, the scheme of Section 13(4) read with Section 17(3) shows that if the borrower is dispossessed, not in accordance with the provisions of the Act, then DRT is entitled to put the clock back by restoring the *status quo ante*. Therefore, it cannot be said that if possession is taken before confirmation of sale, the rights of the borrower to get the dispute adjudicated upon is defeated by the authorised officer taking possession. As stated above, the NPA Act provides for recovery of possession by non-adjudicatory process; therefore, to say that the rights of the borrower would be defeated without adjudication would be erroneous. Rule 8, undoubtedly, refers to sale of immovable secured asset. However, Rule 8(4) indicates that where possession is taken by the authorised officer before issuance of

sale certificate under Rule 9, the authorised officer shall take steps for preservation and protection of secured assets till they are sold or otherwise disposed of. Under Section 13(8), if the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the creditor before the date fixed for sale or transfer, the asset shall not be sold or transferred. The costs, charges and expenses referred to in Section 13(8) will include costs, charges and expenses which the authorised officer incurs for preserving and protecting the secured assets till they are sold or disposed of in terms of Rule 8(4). Thus, Rule 8 deals with the stage anterior to the issuance of sale certificate and delivery of possession under Rule 9. Till the time of issuance of sale certificate, the authorised officer is like a Court Receiver under Order 40 Rule 1 CPC. The Court Receiver can take symbolic possession and in appropriate cases where the Court Receiver finds that a third-party interest is likely to be created overnight, he can take actual possession even prior to the decree. The authorised officer under Rule 8 has greater powers than even a Court Receiver as security interest in the property is already created in favour of the banks/FIs. That interest needs to be protected. Therefore, Rule 8 provides that till issuance of the sale certificate under Rule 9, the authorised officer shall take such steps as he deems fit to preserve the secured asset. It is well settled that third-party interests are created overnight and in very many cases those third parties take up the defence of being a *bona fide* purchaser for value without notice. It is these types of disputes which are sought to be avoided by Rule 8 read with Rule 9 of the 2002 Rules. In the circumstances, the drawing of dichotomy between symbolic and actual possession does not find place in the scheme of the NPA Act read with the 2002 Rules."

From the above, it is very clear that once possession is taken under

Rule 8(3), whether symbolic or statutory, it is in compliance of Rule 8(3).

16.1. Accordingly, additional issue No.2 is also answered against the defendants favouring the plaintiff.

Additional Issue No.3 :

17. The plaintiff had purchased the property in an auction held under the provisions of the SARFAESI Act and the same is purchased on the value mentioned in the sale certificate. Now the question that arises for consideration is whether the non-registration of the sale certificate dated 30.01.2008 under Ex.P.17 is fatal to the suit ?

18. Any conveyance has to be registered based on the market value. Since the value mentioned in the sale certificate is by the Authorized Officer of the first defendant, the question of deficit stamp duty or the applicability of Section 47A of the Indian Stamp Act does not arise. It is suffice if the sale certificate in question is entered by the Registering Authority and he need not register the same. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that certificate of sale granted to any purchaser of any property sold by public auction by a civil/revenue officer does not fall under the

category of non-testamentary documents, which require compulsory registration. Thus, registration is purely optional. The only legal implication is if the sale certificate is not registered, it is not admissible in evidence under Section 35 of the Indian Stamp Act. However, whether registration is mandatory for such sale deeds, which are effected in open auction is the question that came up for consideration earlier before a Division Bench of this Court in **K.Chidambara Manickam V. Shakeena and others, AIR 2008 Madras 108**, wherein, it was held that the sale certificate issued in favour of an auction purchaser does not require any registration under Section 17(2)(xii), as the same has been granted pursuant to the sale held in public auction by the Authorized Officer under the SARFAESI Act.

19. However, a Full Bench of this Court in a recent judgment in **Dr.R.Thiagarajan V. The Inspector General of Registration and others, 2019 (4) CTC 839**, drew a distinction between the Authorized Officer appointed by the Bank in the proceedings initiated under the SARFAESI Act and the Civil or Revenue Court, Collector or Revenue Officer, who has to bring the property to sale. It was observed that the Authorized Officers only represents the secured creditors and therefore, they cannot be termed as civil or revenue

court. Therefore, if the sale certificate is not duly stamped and registered, it is only a still born child and does not confer any right to the auction purchaser. Thus, if the proper stamp duty is not paid, the Full Bench held that the sale certificate will not confer any title on the purchaser and hence, it was held that the sale certificate issued by the Authorized Officer of the bank requires registration and stamp duty under Article 18-C read with Article 23 of Schedule I of the Stamp Act.

20. The Full Bench in the aforesaid judgment had considered the Division Bench judgment in **K.Chidabaram Manickam V. Shakeena and others, AIR 2008 Madras 108**, wherein, it was held by the Division Bench as hereunder :

"10.12. The learned Single Judge, agreeing with the argument advanced by the learned counsel for the borrowers that the right of redemption which is embodied in Section 60 of the Transfer of Property Act is available to the mortgagor, unless it has been extinguished by the act of parties and until the sale is complete by registration, and that the mortgagor does not lose their right of redemption, came to the conclusion that the sale takes complete shape only after it gets registered and it does not come to end by issuance of a sale certificate. But, after considering the relevant provisions in the Registration Act, 1908, we are not in agreement with the conclusion arrived by the learned Single Judge in allowing the writ petitions.

* * *

10.16. In this case, the authorised officer of the secured creditor, exercising the power conferred on him by SARFAESI Act, pursuant to the proceedings initiated by him brought the secured assets of the borrowers for sale in public auction, and, in view of the default in repayment of the loan, confirmed the sale in favour of the highest bidder, the appellant herein and issued the sale certificate on 06.01.2006.”

21. However, in paragraph 22, the Full Bench held that the sale certificate issued by the Authorized Officer of the bank cannot be agnated with the sale certificate issued by a Civil or Revenue Court. The nomenclature given to the document issued by the Authorized Officer would be irrelevant for exemption from payment of stamp duty and the same will not be covered under Article 18-C read with Article 23 of Schedule I of the Stamp Act. Therefore, the Sale Certificate issued by the Authorized Officer would not fall under Section 17(2)(xii) of the Registration Act and the Sale Certificate issued by the Authorized Officer is liable for stamp duty as per market value as per the Article 18-C read with Article 23 of Schedule I of the Stamp Act. Thus, holding so, the Full Bench also held that the sale certificate is liable for stamp duty under Article 18-C and in the event of under-valuation of the property, the Registrar is entitled to proceed in accordance with Section 47-A of the Indian Stamp Act.

22. Curiously, after the instant suit was heard and judgment was reserved on 19.08.2019, the judgment in **Shakeena V. Bank of India, 2019 SCC OnLine 1059** was delivered by the Hon'ble Apex Court on 20.08.2019, which is an appeal against the judgment of the Division Bench of this Court in **K.Chidambara Manickam case (cited supra)**. At the risk of repetition, it is to be stated that the Division Bench held that once the auction sale was confirmed in favour of the auction purchaser and sale certificate also issued in his favour, the sale becomes complete and right in the property vests with the auction purchaser.

23. The Hon'ble Supreme Court in paragraph 25 held that on 06.01.2006, the respondent Bank therein issued the sale certificate in favour of the purchaser, which was not registered by that point of time. However, when the argument was taken by the appellant over the borrowers that only upon registration of the sale certificate, the right of the borrower to redeem the mortgage would get extinguished and obliterated, the auction purchaser had registered the sale certificate on 18.09.2007, after the disposal of writ appeal by the Division Bench on 10.08.2007. Therefore, the Hon'ble Supreme Court

held that there had been a paradigm shift in the rights of the parties upon registration of the sale certificate on 18.09.2007 and also because of the registered sale deed in favour of the third party on 05.10.2007 and held that the contention pursued before the High Court by the appellants has now become unavailable. After holding so, the Hon'ble Supreme Court in paragraph 30 held as follows :

"30. Having said thus, in the peculiar facts of the present case, we do not deem it necessary to dilate further on the argument that registration of the sale certificate in relation to the auction conducted under the 2002 Act is essential. Similarly, it is not necessary to examine other grounds urged by the appellants, in light of our conclusion that the appellants have failed to make a valid and legal tender to the respondent bank before the issue of sale certificate on 6th January, 2006, much less registration thereof on 18th September, 2007."

24. It will not be out of place here to refer to the judgment of the Hon'ble Supreme Court in **Janata Textiles V. Tax Recovery Officer, 2006 (8) SCC 653**, wherein, it is held that "a third party auction purchaser's interest in the auctioned property continues to be protected notwithstanding that the underlying decree is subsequently set aside or otherwise". It is also held that "Law makes a clear distinction between a stranger who is a bonafide purchaser of the property at an auction sale and a decree holder purchaser at a court

auction. The strangers to the decree are afforded protection by the court because they are not connected with the decree. Unless the protection is extended to them the court sales would not fetch market value or fair price of the property."

25. In the light of the above decision of the Hon'ble Supreme Court, in the case on hand also, the plaintiff had purchased the property in auction sale and got the sale certificate issued on 31.01.2008 after the sale was confirmed on 11.01.2008. Further, as held in issue No.2, there is no valid tender as contemplated under Section 13(8) of the SARFAESI Act by the borrower and the so-called tender made by the third respondent also was rejected by the Hon'ble Supreme Court. Thus, the argument that unless the sale certificate is registered, it would not create a right in the property and that the borrower continues to have his right of redemption of the mortgage subsisting is only wild imagination.

26. The second defendant, who is the borrower, or even the subsequent buyers have not taken any steps to redeem the mortgage till today. Even presuming that the third defendant, who had purchased the property, has the right of redemption, the sale deed,

Ex.P.3, does not even mention that the sale is subject to mortgage and the right of redemption is with the third defendant. Besides the steps taken by the third defendant miserably failed and the Hon'ble Supreme Court had directed refund of the amount deposited by him before the first defendant. Therefore, as there was no valid tender by the third defendant exercising the right of redemption by offering the outstanding dues to the first defendant Bank, the Hon'ble Supreme Court had directed return of the money deposited. By virtue of the order passed by the Hon'ble Supreme Court the third defendant's right of redemption got extinguished.

27. The second and third defendants emboldened by the judgment of the Full Bench of this Court in **Dr.R.Thiagarajan's case (cited supra)** submitted that as long as the sale certificate issued in favour of the plaintiff was not registered in the manner known to law, they have the right of redemption. No doubt, the right of redemption is a statutory right under the Transfer of Property Act. The said right pre-supposes the existence of a mortgage. However, the mortgage can be extinguished by the act or conduct of the parties. The proviso to Section 60 of the Transfer of Property Act, 1882, which speaks of the right of mortgagor to redeem, states that as long as the right of

redemption is not extinguished either by the act of the parties or by operation of law in the form of a decree of a court, the right of redemption is available. At the risk of repetition, it is to be reiterated that in the instant case, much water has flown under the bridge, as there were challenges made by the third party purchasers and also the auction purchaser claiming right and interest in the secured asset, whereas, the borrower/owner of the property has not taken any steps to either redeem the property or even challenge the action taken by the mortgagee. Presuming that the third defendant had the right of redemption, the same was also extinguished by the order of the Hon'ble Supreme Court. The third defendant's vendor, namely, the borrower also had not even pleaded about his right of redemption in the written statement, though he had stated that he proposes to take a separate action for setting aside the court auction sale. Therefore, the right of the third defendant could not be any superior or separate from that of his predecessor-in-interest. The right to redeem stood extinguished by the act of law and by the conduct of the parties, the same cannot be availed by the parties.

27.1. Thus, additional issue No.3 is also answered in favour of the plaintiff and against the defendants.

Issue Nos.(1) to (3) :

28. Admittedly, what is referred to in the above issues and the documents, namely, the sale deed dated 27.04.2005 executed by the second defendant and others in favour of the third defendant ; the Power of Attorney dated 18.02.2008 executed by the third defendant in favour of the fourth defendant ; and the sale deed dated 20.02.2008 executed by the fourth defendant in the capacity of Power of Attorney of the third defendant in favour of the fifth and sixth defendants - were during the subsistence of the mortgage and also pending the SARFAESI proceedings, as the notice under Section 13(2) of the SARFAESI Act was issued on 10.08.2002 by the first defendant. The plaintiff now seeks to declare these documents as *sham* and *nominal* and therefore, *null and void*.

29. Learned counsels appearing for the defendants contended that only symbolic possession of the property was taken under the SARFAESI Act and the actual possession had not been given to the purchaser. In this regard, the effect of transfer can be referred to in Section 8 of the Transfer of Property Act, 1882, which reads as follows:

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"8. Operation of transfer.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect."

30. The second defendant Balaganesan, who was examined as D.W.2, had categorically admitted that he had sold the property to the third defendant pending subsisting mortgage with the first defendant. Ex.P.3 is the said document, which also does not mention that there is a subsisting mortgage. Admittedly, the second defendant was in

possession of the original title deeds, which were not deposited with the Bank. He had sold the suit property under Ex.P.3. It is already discussed above that the third defendant had not deposited the amount for redemption of the mortgage, as directed by the Hon'ble Supreme Court. It is also discussed in the previous paragraphs that the secured creditor would remain a secured creditor once constructive or symbolic possession is taken. As stated in Section 8 of the Transfer of Property Act, unless the defendant's intention is expressed or implied, the transfer of property passes to the transferee with all the interest, which transferor was then capable of passing in the property. The property being a secured asset and the proceedings were initiated only for the realization of the recovery of the debt by sale of the property, there could not be any intention different from transferring the rights in the property along with the possession.

31. Section 13(6) of the SARFAESI Act also makes it clear that a different intention is so expressed by the Act as any transfer of a secured asset after taking possession thereof shall vest in the transferee all rights in the secured asset so transferred as if the sale had been made by the owner of such secured asset. It is, therefore, clear that statutorily under Section 13(6) of the Act, though only the

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purchaser's right of taking possession, whether symbolic or physical has taken place, yet the secured creditor may by sale vest in the purchaser all rights in the secured asset, as if the transfer had been made by the original owner of such secured asset.

32. In the light of the provisions of Section 13(6) of the SARFAESI Act, Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 and also Section 8 of the Transfer of Property Act, 1882, a secured asset remains a secured asset even after the possession is taken over, as Section 13(6) of the SARFAESI Act does not convert the secured creditor into a owner of the asset and it merely vests complete title in the transferee of the asset, once the transfer takes place in accordance with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002.

33. In the light of the above provisions, when the first defendant had issued the notice under Section 13(4) as early as on 02.12.2003, suppressing the subsisting mortgage, the second defendant had sold the property to the third defendant. The other documents referred to are admittedly subsequent to the same. The sale in favour of the plaintiff is also not challenged till today. The action of the third

defendant as the purchaser from the second defendant in challenging the auction of the property also had attained finality, when the Supreme Court passed the order dated 07.12.2007 in SLP No.12617 of 2008. As the challenge made by the third defendant in the capacity of the purchaser of the secured asset was rejected by this Court and also the Hon'ble Supreme Court, the claim of the third defendant as owner of the property by virtue of the sale deed dated 27.04.2005 is *void*. The other documents all executed on the strength of the said sale deed, namely, Power of Attorney dated 18.02.2008 and the sale deed dated 20.02.2008. As the sale in favour of the plaintiff was confirmed and sale certificate was issued on 31.01.2008 subsequent to the dismissal of the SLP No.12617 of 2008, the Deed of Power of Attorney dated 18.02.2008 and the subsequent sale deed dated 20.02.2008 executed by the fourth defendant in the capacity of Power of Attorney of the third defendant in favour of the fifth and sixth defendants are all executed by a person, namely, the third defendant, who did not have any marketable or saleable right on the date of the execution of the said documents and hence, those documents are *sham and nominal* and they are *null and void*.

33.1. Thus, the issue Nos.(1) to (3) are also answered in favour of the plaintiff and against the defendants.

Issue Nos.(4) to (8) :

34. In view of findings rendered with respect to issue Nos.(1) to (3), these issues are answered against the defendant and the plaintiff, who is the bonafide purchaser of the suit property, is entitled to have his share, for which originally the borrower was entitled to, and he shall be given vacant possession of the same alone.

Issue Nos.(9) and (10) :

35. In view of the above discussion, there is no necessity to render any specific findings in respect of these issues.

36. As indicated at the outset, the only relief sought for by plaintiff against the first defendant is claim No.(f), which was given up during the trial by the plaintiff. Thus, A.Nos.4782 to 4784 of 2018 become redundant and therefore, all these applications are dismissed.

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37. In the result, the prayer (a) to (d) sought for by the plaintiff are ordered in his favour and the suit is decreed to the above extent.

With respect to the prayer (e) and (f), the suit is dismissed.

38. The parties shall bear their own costs.

39. It is to be stated that in view of the judgment of the Full Bench of this Court in **Dr.R.Thiagarajan's case (cited supra)**, it is open to the plaintiff to get the sale certificate registered to safeguard his interest within a period of eight weeks from the date of receipt of a copy of the judgment and decree.

04.10.2019

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Index : Yes / No

Internet : Yes

To

The Sub-Assistant Registrar,
Original Side,
Madras High Court,
Chennai-600 104.

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I. List of Witnesses examined on the side of the plaintiff :

P.W.1 - J.Sekar (Plaintiff)

II. List of Documents marked on the side of the plaintiff :

- Ex.P.1 - Tender-cum-Auction Sale Notice in English News Daily dated 15.02.2007
- Ex.P.2 - Tender-cum-Auction Sale Notice in Tamil News Daily dated 15.02.2007
- Ex.P.3 - Sale Deed dated 27.04.2005
- Ex.P.4 - Application in S.A.No.97/2007 before DRT dated 6.3.2007
- Ex.P.5 - Extract of proceedings of the PO, DRT II, Chennai, in S.A. No.97/2007 dated 12.03.2007
- Ex.P.6 - Order passed in I.A.No.228/2007 in I.N.No.168/2007 dated 22.03.2007
- Ex.P.7 - Order dated 23.03.2007 passed in M.P.No.1/2007 in CRP (PD)No.839/2007
- Ex.P.8 - Auction proceedings dated 24.03.2007
- Ex.P.9 - Letter of Acknowledgment for payment given by D1 to the plaintiff dated 24.03.2007
- Ex.P.10 - Order dated 21.07.2007 passed in CRP (PD)No.839/2007
- Ex.P.11 - Order dated 17.09.2007 passed in SLP No.12617/2007
- Ex.P.12 - Letter dated 13.08.2007 issued by the first defendant to the plaintiff
- Ex.P.13 - Order dated 07.12.2007 passed in SLP No.12617/2007
- Ex.P.14 - Letter dated 18.12.2007 issued by the plaintiff to D1
- Ex.P.15 - Confirmation of auction sale issued by D1 to plaintiff dated 11.01.2008
- Ex.P.16 - Letter dated 25.01.2008 issued by plaintiff to D1
- Ex.P.17 - Sale Certificate dated 31.01.2008
- Ex.P.18 - Letter dated 31.01.2008 issued by D1 to plaintiff
- Ex.P.19 - Encumbrance Certificate dated 07.11.2008
- Ex.P.20 - Sale deed dated 20.02.2008 by D4 in favour of D5 & D6
- Ex.P.21 - Letter dated 13.08.2008 issued by plaintiff to D1
- Ex.P.22 - Letter dated 26.04.2007 issued by plaintiff to D1
- Ex.P.23 - Affidavit of D1 in SLP No.12617/2007
- Ex.P.24 - Letter dated 12.02.2008 by plaintiff to D1
- Ex.P.25 - Letter dated 15.04.2008 by plaintiff to D1
- Ex.P.26 - Letter dated 19.11.2008 by plaintiff to D1
- Ex.P.27 - Settlement Deed dated 16.11.1982

III. List of Witnesses examined on the side of the defendants :

- D.W.1 - A.Aramvalartha Nathan, Chief Manager, IOB
D.W.2 - Balaganesan
D.W.3 - S.Venkateswaran

IV. List of Documents marked on the side of the defendants :

- Ex.D.1 - Letter of Authorization dated 01.12.2011
Ex.D.2 - Order dated 20.01.2007 in CrI.M.P.No.120/2007 on the file of CMM, Egmore, Chennai.
Ex.D.3 series - Valuation Report dated 01.02.2007
Ex.D.4 series - Report dated 07.02.2007 filed by Advocate Commissioner

04.10.2019



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PUSHPA SATHYANARAYANA, J.

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and A.Nos.4782 to 4784 of 2018

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