

C.R.P.(NPD).No.1551 of 2015

C.SARAVANAN.,J.

By an order dated 18.07.2019, the above Civil Revision Petition was disposed. There being the few typographical errors in the order, the Civil Revision Petition was listed under the caption for "clarification" on today.

2.The learned counsel for the petitioner and the 5th respondent also confirmed the typographical errors.

3.Therefore, the typographical errors were in the order are modified as follows:-

- i. In paragraph 6, in the 2nd line instead of "learned Principal District Judge", it was wrongly typed as "learned Principal District Munsif". Therefore, the expression "learned Principal District Munsif" is substituted with the expression "learned Principal District Judge".
- ii. In the end of paragraph 6, following sentences shall be added:

"In case the court concludes that the suit is maintainable, it shall determine the participle interest of the petitioner in the suit schedule

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property for recovering the amounts from the borrowers who had allegedly mortgaged the suit schedule property to the 5th respondent Bank. The correctness of the securitisation proceedings shall be tested only under the machinery prescribed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002.”

4.Accordingly, the present Civil Revision Petition is clarified with the above corrections.

10.01.2020

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Note: Registry is directed to correct the above corrections, issue fresh copy to the parties and send the copy to lower court immediately.

To

- 1.The Principal District Judge, Dharmapuri.
- 2.The Section Officer, V.R. Section, High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2019

CORAM

THE HONOURABLE **MR. JUSTICE C.SARAVANAN**

C.R.P(NPD).No.1551 of 2015

Rajeswari

... Petitioner

Vs.

1.Subramanian

2.Muniappan

3.Venkatachalapathi

4.Krishnammal

5.The Branch Manager,
Indian Bank, Dharmapuri Branch
D.D.D.C Building
Pennagaram Road,
Dharmapuri Town and Taluk
Dharmapuri District.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the rejection of plaint order dated 13.03.2015 passed in O.S.S.R.No.1095 of 2015 filed on 26.02.2015 on the file of the Principal District Judge, Dharmapuri and consequently directing the Hon'ble lower Court to take the suit O.S.S.R.No.1095 of 2015 filed on 26.02.2015.

For Petitioner : Mr.J.Deliban

For R5 : Mr.M.Sridhar for
Mr.L.Jayakumar & Associations

For R1 to R4 : No appearance

ORDER

The present Civil Revision Petition has been filed to set aside the impugned order dated 13.03.2015 passed by the learned Principal District Judge, Dharmapuri in an unnumbered suit vide O.S.S.R.No.1095 of 2015 filed on 26.02.2015 and to direct the lower court number the suit and to take up the case of the petitioner.

2.The petitioner has filed the above suit before the Principal District Court, Dharmapuri to partition the suit schedule property, for separate possession and for permanent injunction of the suit schedule properties vide O.S.S.R.No.1095 of 2015.

3.The Principal District Court has dismissed the unnumbered suit on the ground that the suit was not maintainable and was contrary the provisions of the SARFAESI Act.

4.I have perused the plaint. The suit was filed for partition of the suit schedule properties. According to the petitioner the suit schedule property has been mortgaged with the 5th respondent Bank by the other respondents without his knowledge and SARFAESI proceedings have been initiated.

5.The learned counsel for the 5th respondent is present and submits that there is no suit therefore he is not in a possession to make any submissions on the merits of the case. He also submitted that the property has still not been auctioned and or sold under the provisions of SARFAESI Act.

6.I am of the view, the court ought to have numbered the suit and not rejected the same. Therefore, the learned Principal District Musif, Dharmapuri is directed to number the suit and take up the suit and dispose the same within a period of nine months from the date of receipt of a copy of this order.

7.Liberty is given to the 5th respondent to raise preliminary objection to raise questions relating to maintainability of suit.

8.Thus, the present Civil Revision Petition stands allowed with the above observations. No costs.

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18.07.2019

Index : Yes/No

Internet : Yes/No

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To

- 1.The Principal District Court,
Dharmapuri.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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