

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.08.2020	Delivered on 04.09.2020
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. PD.No.1286 of 2018
and CMP No.6626 of 2018

L.Nithish Krishna .. Petitioner

Vs.

1. P.Sakunthala

2. P.Leela Krishnan

3. P.Latha

S.P. Thirumalaisami (died)

4. R.Kanchana

5. T.Naveen Kumar

6. T.Vishnu

7. Canara Bank,
Rep. By its Branch Manager,
Trichy Road, Branch,
Kaviraj Towers, No.1192,
Trichy Road, Coimbatore 641 004.

8. M.Yakuv

9. S.Salim

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the orders of the learned V Additional District Judge of Coimbatore, dated 18.09.2017 in I.A.No.646 of 2014 in O.S.No.562 of 2012.

For Petitioner : Mr. Karthik
for M/s.V.Nicholas

For Respondents : Mr.B.Gnanavinothan, for RR 1 to 3

Mr.V.Venkatasamy, for RR 4 to 6

Mr.Rahunathan,
for M/s.T.S.Gopalan & Co. , for R7

No appearance for RR 8 & 9

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision is at the instance of the plaintiff in OS No.562 of 2012, a suit for partition and separate possession of his 1/4th share in the suit properties, aggrieved by an order rejecting his application for impleading the proposed parties, viz., Canara Bank represented by its Branch Manager, Trichy Road Branch, Coimbatore, and two others.

2. It is claimed that the first proposed party has attempted to initiate action under the *SARFAESI Act* and the second and third proposed parties have purchased portions of the suit properties during the pendency of the suit.

3. The said application was resisted by the fifth respondent/proposed party, viz., Canara Bank contending that it being a secured creditor is entitled to exercise its rights under the *SARFAESI Act*. Section 34 of the *SARFAESI Act*, bars civil suits challenging proceedings taken under the Act. It was further contended that the Hon'ble Supreme Court has held that the remedy available to a person, who claims to have an interest in the security is to avail of the remedy under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

4. The learned Trial Judge, who considered the application for impleading accepted the defence set up by the fifth respondent and dismissed the application, concluding that insofar as the Bank, viz., the 8th respondent is concerned, the application cannot be entertained in view of the provisions of

Section 17 of the *SARFAESI Act*. As regards the respondents 9 and 10, the learned Trial Judge dismissed the application on the ground that neither the petitioner nor the respondents 9 and 10 have given particulars of the date of purchase of property by them, hence the revision.

5. I have heard Mr.Karthik, learned counsel appearing for M/s.V.Nicholas, for the petitioner, Mr.B.Gnanavinothan, learned counsel appearing for the respondents 1 to 3, Mr.V.Venkatasamy, learned counsel appearing for the respondents 4 to 6 and Mr.Rahunathan, learned counsel appearing for M/s.T.S.Gopalan & Co. for the seventh respondent. The respondents 8 and 9, though served are not appearing either in person or through counsel duly instructed.

6. As already stated that the suit is one for partition which was initiated even prior to action being initiated by the seventh respondent Bank under the *SARFAESI Act*. Before going into the question, as to whether, the Bank can be impleaded in a suit for partition which was initiated prior to the initiation of action under the *SARFAESI Act*, I will deal with the reasons given by the learned Trial Judge for dismissing the application for impleading the

respondents 8 and 9. The petitioner had alleged that the respondents 8 and 9 herein, who were respondents 9 and 10 before the Trial Court, had purchased a certain property from the defendants in the suit during the pendency of the suit.

7. The respondents 8 and 9 have filed a counter stating that they have purchased the property for valid and proper consideration and they are *bona fide* purchasers for value without notice of the pending litigation. They have not denied the fact that they had purchased the property. The Hon'ble Supreme Court and this Court have repeatedly held that even *pendente lite* purchasers in a suit for partition have certain rights which they can work out at the trial or at the final decree proceedings and it cannot be said that they are wholly unnecessary parties to the suit.

8. The reasoning of the learned Trial Judge to dismiss the application is rather surprising. When an allegation is made that the respondents 8 and 9 have purchased certain properties subject matter of the suit and the same is not denied by the respondents 8 and 9, the Trial Court ought not to have dismissed the application for impleading them on the ground that the date of purchase has not been given. Once they are impleaded they would get a right to file their

written statement and they can very well disclose those details in the said written statement. Therefore, the reason given by the Trial Judge for dismissing the application as against the respondents 8 and 9 herein cannot be upheld.

9. Coming to the impleading of the seventh respondent Bank, Mr.Rahunathan, learned counsel appearing for the Bank, would rely upon the judgments of the Hon'ble Supreme Court in ***Jagdish Singh v. Heeralal and others***, reported in (2014) 1 SCC 479, and ***Sree Anandhakumar Mills Limited v. Indian Overseas Bank and Others***, reported in (2019) 14 SCC 788, wherein the Hon'ble Supreme court has held that in view of the bar created under Section 34 of the Act and in view of the machinery provided under Section 17 of the Act to enable even third parties to challenge actions under the *SARFAESI Act*, before the Debt Recovery Tribunal, the secured creditors who have a right under the *SARFAESI Act* cannot be sought to be impleaded in civil suits. But both the said decisions deal with cases where a suit is filed after the initiation of the action by the secured creditor under the *SARFAESI Act*, seeking partition and also challenging the said action, it was under those circumstances, the Hon'ble Supreme Court held that the bar enacted under Section 34 would apply and also concluded that it will be open to the person claiming independent title

to make a claim under Section 17 of the said Act, before the Debt Recovery Tribunal.

10. Though a reference is made to the *Mardia Chemicals Ltd. V. Union of India*, reported in (2004) 4 SCC 311, in *Jagdish Singh's* case, the Hon'ble Supreme Court in *Jagdish Singh's* case had held that a suit of proceedings in respect of any matter which a Debt Recovery Tribunal or Appellate Tribunal is empowered by or under the Securitisation Act, would be barred under Section 34. This would imply that so long as the proceedings under the Securitisation Act, are not initiated a Civil Court would have jurisdiction to try a suit for partition.

11. No doubt the Civil Court may not have the right to decide on the validity or otherwise of the creation of the security, but still it can pronounce upon the entitlement of the parties to a share without touching upon binding the nature of the securities so created in favour of the Bank or the Financial Institution. It would still be open to the Bank to contend that if the sharer has to redeem the mortgage in full. But a subsequent initiation of action under the Securitisation Act, would not take away the jurisdiction of the Civil Court to

decide on partition.

12. The Hon'ble Supreme Court in ***Nahar Industrial Enterprises Ltd v. Hong kong & Shanghai Banking Corporation***, reported in **2009 (8) SCC 646**, while considering the extent of the ouster of the jurisdiction of the Civil Court by the provisions of Sections 17, 18 and 19 of the Recovery of Debts Due to the Banks and Financial Institution Act 1993, had held that it is difficult to conclude that the Civil Court jurisdiction is completely ousted. While pronouncing upon the jurisdiction of the Civil Court and the effect of the bar created under the provisions of Sections 17, 18 and 19 of the Recovery of Debts Due to Banks and Financial Institution Act 1993, the Hon'ble Supreme Court has observed as follows:

118. The liabilities and rights of the parties have not been created under the Act. Only a new forum has been created. The banks and the financial institutions cannot approach the Tribunal unless the debt has become due. In such a contingency, indisputably a civil suit would lie. There is a possibility that the debtor may file preemptive suits and obtain orders of injunction, but the same alone, in our opinion,

by itself cannot be held to be a ground to completely oust the jurisdiction of the civil court in the teeth of Section 9 of the Code. Recourse to the other provisions of the Code will have to be resorted to for redressal of his individual grievances.

119. It is also difficult to accept the contention of leaned counsel for the banks that the civil court's jurisdiction is not in consonance with the Act. We do not find the same to be correct. On the ground of inconsistency in the procedures contained in the two Acts alone, the jurisdiction of the civil court cannot be said to have been ousted.

13. In the case on hand, the suit in question had been instituted even prior to action under the Securitisation Act was contemplated or launched. It is also found from the status report filed by the Bank that one of the properties have been released from the mortgage, therefore the suit in respect of that property which has been released from the mortgage would be maintainable and it is still open to the plaintiff to question the action taken by the Bank under the *SARFAESI Act*, by taking appropriate proceedings under Section 17 of the

SARFAESI Act.

14. In the above circumstances, it cannot be said that the Bank is an unnecessary or an improper party to the suit. May be it is not a necessary party, but it will still be a proper party as the Bank has an interest in the property subject matter of the suit. The presence of the Bank therefore would only aid the Court in adjudicating the rights of the parties before it. I am therefore unable to subscribe the view of the Trial Court that the Bank cannot be impleaded in the suit for partition which has already been instituted and pending on the date when proceedings under the *SARFAESI Act*,.

15. In view of the above, the Civil Revision Petition is **allowed**, the order impugned in the revision is set aside, the application in IA No.646 of 2014 will stand allowed. The proposed parties are impleaded in the suit as defendants 8, 9 and 10. Needless to state that the defendants 8, 9 and 10 will have the right to file a written statement and contest the suit. No costs. Consequently, the connected miscellaneous petition is closed.

04.09.2020

jv

Index: Yes/No

Internet: Yes/No

speaking order/Non speaking order

To

1. The V Additional District Judge, Coimbatore.
2. The Section Officer, V.R.Section, High Court of Madras.



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R.SUBRAMANIAN, J.

jv



Pre Delivery Order

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