

C.R.P.(PD).Nos.1805 and 1806 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD).Nos.1805 and 1806 of 2016

&

C.M.P.No.9406 of 2016

Maruthachalam

... Petitioner in both cases

Vs.

1. K.Velusamy

2. V.C.Vijayalakshmi

3. G.V.Saranya

... Respondents 1 to 3 in both the cases

4. A.Duraisamy

5. M/s.Central Bank of India
represented by its Authorised Officer
Regional Office No.14& 15
V.H.Road, Coimbatore-1
Regional Office, Coimbatore

... 4th and 5th Respondent in
C.R.P.(PD)No.1806/2016

C.R.P.(PD).Nos.1805 and 1806 of 2016

Prayer in C.R.P.(PD)No.1805 of 2016: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 30.01.2015 in I.A.No.1780 of 2014 in O.S.No.602 of 2014 on the file of the I Additional District Munsifs Judge, Coimbatore.

Prayer in C.R.P.(PD)No.1806 of 2016: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 16.10.2014 in I.A.No.2298 of 2014 in O.S.No.602 of 2014 on the file of the I Additional District Munsif Judge, Coimbatore.

For Petitioner : Mr.R.Singaravelan, Senior Counsel
for
Mr.C.R.Prasanan

For Respondents : Mr.Muthumani Doraisami, Senior Counsel
for
Mr.M.Kandavel Doraisami for R1 to 3
Mr.T.M.Hariharan for R5

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COMMON ORDER

The Civil Revision petition No.1805 of 2016 is preferred against the dismissal of petition filed for rejection of plaint under Or.7 R.11 C.P.C. The Civil Revision petition No.1806 of 2016 is preferred against the dismissal of petition filed for holding (i) that sale certificate dated 11.03.2014 is admissible and (2) that alleged document of No objection certificate is inadmissible for want of stamp duty and registration.

2. The predominant contention of the petitioner is that filing of suit before the Civil Court is barred under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act). The only remedy available to the plaintiff is to file an appeal u/s. 17 of SARFAESI Act and the civil suit is not maintainable. The plaintiff has admitted the sale notice, auction conducted by the 2nd defendant bank. Even after the sale been confirmed and a sale certificate was issued on deposit of the sale amount, he filed a civil suit which is specifically barred and therefore, the suit should have been rejected and on the other hand Trial

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Court has dismissed the petition.

3. I have heard the counsel appearing for both sides.

4. It is well settled that for deciding an application under Or.7 R.11 C.P.C the averments made in the plaint are germane for consideration. A reading of the plaint discloses the following facts:

Originally an extent of 5.93 acres of agricultural property which includes the suit property also was owned by one Arumuga Gounder, he sold

Survey .No	Extent
S.F.No.350/1	3.19 acres
S.F.No.351/1	1.57 acres
S.F.No.352	1.17 acres
Total	5.93 acres

5. By way of a registered sale deed he sold the property to one Thambi Gounder @ Palani Gounder on 10.02.1936. Arunachala Gounder being the sole legal heir of Thambi Gounder @ Palani Gounder inherited the property. The said Arunachala Gounder has two sons viz., Palanisamy and Duraisamy.

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They have partitioned the property among themselves in which Schedule I consisting of 3.78 acres in S.F.No.341/1 was allotted to Arunachala Gounder. Schedule II was allotted to Palanisamy and Schedule III was allotted to Duraisamy. Schedule II consists of

Survey No	Extent
350/1	2.66 acres
350/2 and 351/2	0.08 acres

6. In so far as property in S.F.No.352 measuring an extent of 1.17 acres was retained by the said Arunachala Gounder in other words it was not included in the partition. Out of this 1.17 acres he sold 80 cents in S.F.No.352 to one Kandasamy Gounder by way of registered sale deed. The said sale was ratified by a notarized ratification deed dated 08.10.2008 by the legal heirs of Arunachala Gounder in favour of the legal heirs of P.Kandasamy. The legal heirs viz., Valliammal the mother, Vasanthi the wife and daughters Keerthana and Jayashree of late Kanthsamy sold the property measuring 0.80 acres in S.F.No.352 in favour of the plaintiff on 15.10.2008. They are in peaceful possession and enjoyment of the same.

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7. While the matter stood thus, during 2012, 5th respondent bank started measuring the properties. They have measured properties of the plaintiff in S.F.No.352 also. On enquiry it was informed that 1st defendant Duraisamy had mortgaged 1.66 acres in S.F.350/1 which is brought for auction. It is also seen that the 2nd defendant bank had requested the jurisdictional Thasildar to measure S.F.No.350/1. The said Thasildar in his report dated 19.02.2007 which is marked as plaint document No.15 has given a report that only 0.86 acres are available on ground in S.F.No.350/1. Thereafter, on 28.07.2012 sale notice was issued by the 2nd defendant bank in "Daily Thanthi". Immediately, the plaintiff filed a suit in O.S.No.1646 of 2012 for a declaration that the 2nd defendant is not entitled to proceed against the suit property and also for permanent injunction restraining the 2nd defendant from interfering with the plaintiff's possession and enjoyment. In that suit an Advocate Commissioner was appointed in I.A.No.1866 of 2012. He also filed a report that he measured the property with the assistance of Taluk Surveyor and found that only 0.86 acres is available on ground in S.F.No.350/1. The 2nd defendant did not file any written statement in the

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above suit. On the other hand, notified an e-auction sale of S.F.No.350/1 including the boundaries of the suit property also. In the notification, the pendency of the Civil Suit in O.S.No.1646 of 2012 was not even mentioned. Incidentally, it came to the notice of the plaintiff that the factual position was known to 3rd defendant on 23.02.2012, the revision petitioner/3rd defendant issued a legal notice to the bank that what is available on ground in S.F.No.350/1 is only 1.86 acres out of those 1.86 acres, the mortgager namely 4th respondent herein A.Duraisamay sold 1 acre under document No.2311 of 1992. Therefore, Duraisamy has only 0.86 acres in S.F.No.350/1 and remaining 0.80 acres as per the deed is only in S.F.No.352. Therefore, the bank cannot sell more than what is possessed by Duraisamy namely 0.86 acres in S.F.No.350/1. Thereafter, the sale was conducted on 22.06.2014 and the 3rd defendant became the highest bidder and the sale certificate was also issued. He, being the third defendant in the present suit filed the above application under Or.7 R.11 C.P.C.

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8. The Trial Court has observed that subject matter of the suit falls in S.F.No.352. The same was not mortgaged to the bank. The bank has proceeded against the property in S.F.No.350/1. In so far as the plaintiff is concerned, his property is not involved in the SARFAESI proceedings. Petitioner/3rd defendant is also a third party to a loan transaction and he is concerned only about the property in S.F.No.350/1 and he has nothing to do with S.F.No.352. It also observed that no Civil Court shall have jurisdiction to entertain any proceedings in respect of any matter falls under the purview of Debts Recovery Tribunal or Appellate Tribunal. Whereas the auction pertaining to S.F.No.350/1 is not covered in the Civil suit and the suit pertains only to the property in S.F.No.352. Therefore, the suit will not fall under the purview of SARFAESI Act and Debt Recovery proceedings and therefore the petitions are not sustainable.

9. I have considered the submissions of both sides.

10. Facts narrated above are not disputed.

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11. At the outset, it is not in dispute that the property in S.F.No.352 belonging to the plaintiff was not mortgaged to the bank. The property mortgaged to the bank is S.F.No.350/1 to an extent of 1 acre and 66 cents. Therefore, the bank can proceed with the recovery proceedings in respect of debtors property in S.F.No.350/1. Whatever is available in S.F.No.350/1 can be sold and the debt can be realised. The remaining balance shall be recovered from the debtor by proceeding against him in respect of the other properties. For that purpose the bank cannot attach or sell the adjacent properties belonging to third parties and make the property owner to litigate before the DRT or Appellate Tribunal. If the suit property in O.S.No.602 of 2014 was mortgaged by the debtor falsely representing that he is the title holder through fabricated documents, Bank can proceed under SARFAESI Act, and the suit barred. Whereas the suit property was not mortgaged at all and the mortgagor also does not claim that it is his property or is the property was allotted to him through partition. Bank cannot expand the scope taking shelter on the boundaries.

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12. It is pertinent to note that the bank has requested the Thasildar to measure the property in S.F.No.350/1 and on the request of the bank the Thasildar measured it and filed a report in O.M.FL.418/06E1 dated 19.02.2007 that only 0.86 cents alone is available on ground in the name of Duraisamy. An extent of 1 acre pertains to one Ramasamy son of Arunachala Gounder. Therefore, it is crystal clear that the bank is very much aware of the extent available on board in S.F.No.350/1 is only 0.86 cents. Whiles, the notification issued by the bank to the extent of 1.66 acres by itself is illegal and will amount to deliberately misleading the auction purchasers. Infact, the bank officials in order to save their skin have given this misleading advertisement, for they have failed in their duty to verify the actual extent of land owned by the debtor before advancing loan. This fact is known to the auction purchaser also two years prior to the sale. On 22.03.2012, the auction purchaser himself issued a legal notice that 1st defendant debtor namely Duraisamy posses only 0.86 acres in S.F.No.350/1. Even though it is incidentally brought to the notice of the Court, the Court shall take judicial notice of it. Even without considering the document dated 22.03.2012, on the

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basis of the plaint averment and plaint documents, it is clear that the 2nd defendant bank has indulged in improper and irregular procedure in suppressing material facts. The improper conduct of the bank is after receiving an official report from the Thasildar and also having knowledge of the report filed by the Advocate Commissioner before the competent Civil Court in respect of the suit property in O.S.No.1646 of 2012, wherein the bank is also a party.

13. Learned Senior Counsel appearing for the petitioner would vehemently contend that subsequent to the auction purchase of the property when the auction purchaser attempted to take possession, a police complaint was laid and they were put in prison and suffered lot of mental agony and disgrace. They have explained everything in written statement. Therefore, the plaint on this ground should also be rejected.

14. Learned counsel appearing for the bank would take strenuous efforts to cover up the property in S.F.No.352 within the boundaries notified

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by them in the sale notification and therefore, the remedy available to the revision petitioner/plaintiff is only before the Debts Recovery Tribunal. Whether the property is covered within the boundaries described in the sale notification is matter for evidence. The sale notice specifically mentions S.F.No.350/1 and it is not S.F.No.352. In any event, by any stretch of imagination, the matter will not fall within the purview of the mortgage deed and thereby the SARFAESI proceedings initiated by the bank. Therefore, the plaintiff need not approach the Debts Recovery Tribunal and the suit as it is not barred by provisions of SARFAESI Act. I do not find any discrepancy in the order passed by the Trial Court. It is open to the parties to let in evidence and get a judgment from the Court. Therefore, the Civil Revision petitions merits no consideration. Accordingly, both the Civil Revision petitions are dismissed. No Costs. Connected miscellaneous petition is closed.

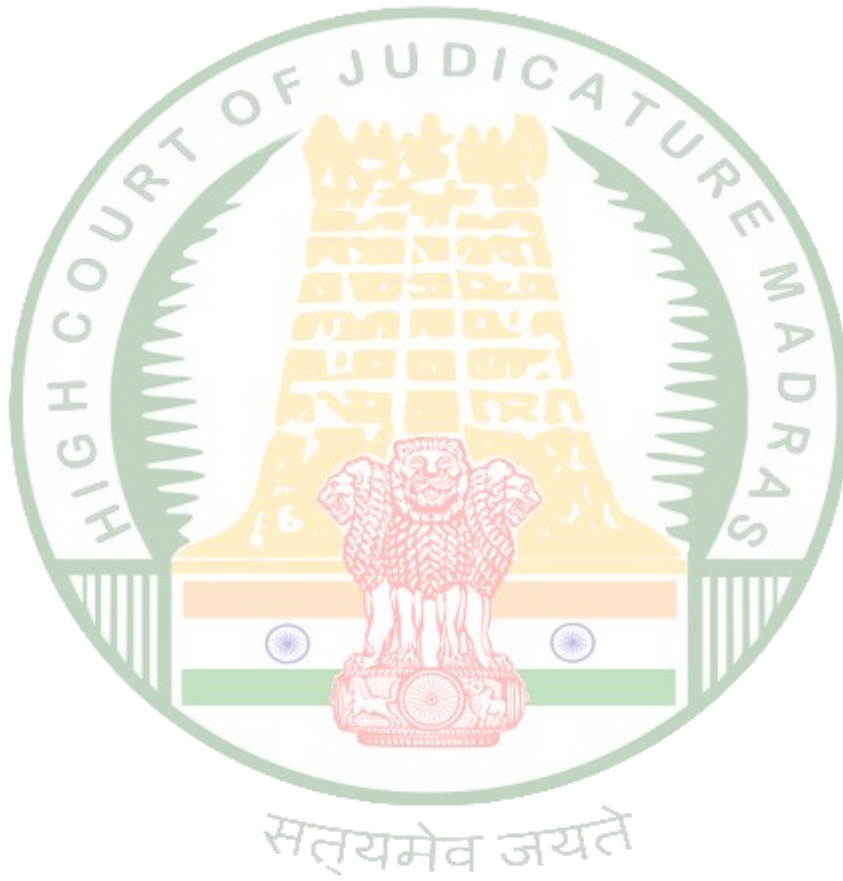
Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order

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To

The I Additional District Munsif Judge
Coimbatore

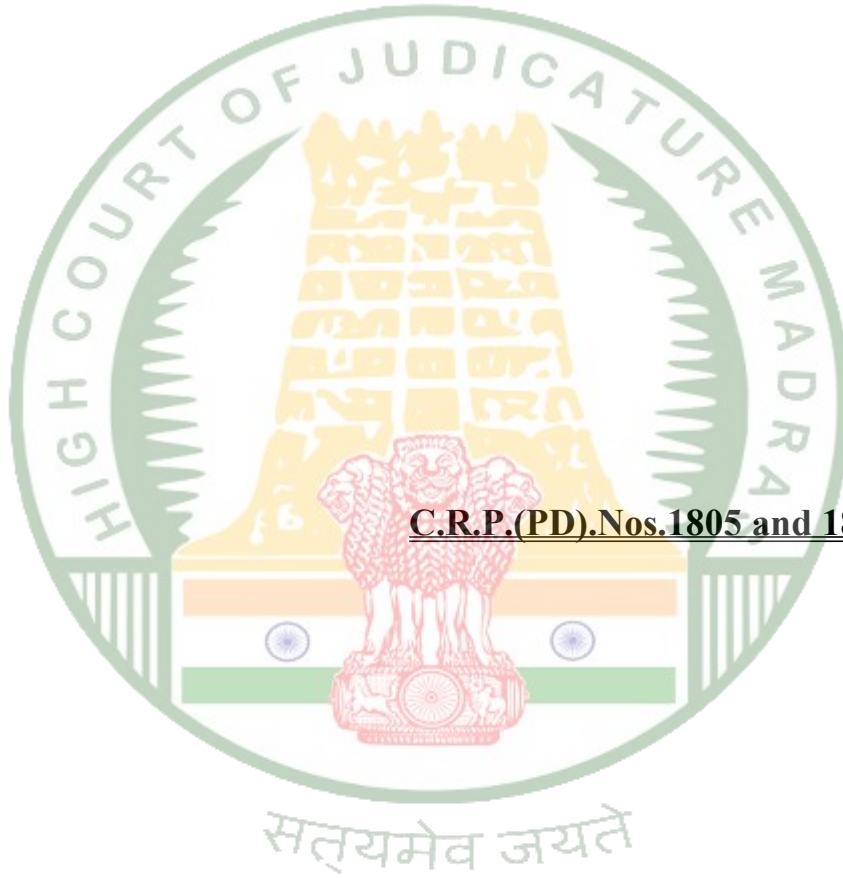


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M.GOVINDARAJ, J.

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