

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P. (PD) No.312 of 2020

Indian Overseas Bank,  
rep. by its Branch Manager,  
Teynampet Branch,  
Chennai - 600 006.

... Petitioner

Vs.

S.Venkatachalam

... Respondent

Prayer: Petition under Article 227 of the Constitution of India to strike off O.S.No.1852 of 2019 on the file of VII Assistant Judge, City Civil Court, Chennai as barred under the provisions of the Code of Civil Procedure, 1908 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

For Petitioner

: Mr.K.R.Ananda Gomathy

For Respondent

: Mr.P.C.Harikumar  
for M/s.P.C.Harikumar and  
Associates

**ORDER**

(Order of the Court was made by The Hon'ble Chief Justice)

The facts are not disputed, though the parties are at variance as to how the law would apply thereto.

2. The petitioner herein has been arrayed as a defendant in a suit by the respondent wherein the principal reliefs claimed pertain to a declaration in respect of an immovable property and the consequential injunction.

3. The case of the plaintiff is that upon certain arrangements within the family, the relevant property devolved on the plaintiff and R.Thiagarajan, at any rate, did not enjoy the exclusive rights in respect thereof. According to the plaintiff, the property was originally owned by one Sivagurunathan, who transferred it in favour of Sivannayaki Ammal alias Rajammal in 1960. Sivannayaki Ammal died in 1991 leaving behind four legal heirs, namely, R.Rathinasabapathy; S.Thangam, wife of Sethu Muthiah; Sivagurunathan; and, R.Thiagarajan. The plaintiff claims in

O.S.No.1852 of 2019 filed before the City Civil Court, Chennai that on October 14, 1992, a general power of attorney was executed by R.Rathinasabapathy, S.Thangam and S.Parvathi (wife of Sivagurunathan) in favour of R.Thiagarajan; but such power of attorney was not acted upon at all and may not have seen the light of the day for more than 16 years.

4. It appears that on or about August 11, 2008, R.Thiagarajan deposited the title deeds pertaining to the property to the bank, but he has not received any credit facilities whether as a borrower or as a guarantor.

5. The bank issued an e-auction notice on February 26, 2019 for auction of the relevant property to be conducted on March 30, 2019 at a reserved price slightly in excess of Rs.2.15 crore. Incidentally, such sale failed and the sale was adjourned to a later date.

6. However, before the sale could be conducted in terms of the notice dated February 26, 2019, the respondent herein instituted the said suit before the City Civil Court, Chennai on or about March 12,

2019 seeking the following principal reliefs:

"a. For declaration, declaring that the Memorandum of Deposit of Title Deeds executed by R.Thiagarajan in favour of the defendant and registered on 11.8.2008 as document No.769 of 2008 on the file of the Sub Registrar/District Registrar, Chennai Central, is not binding on the Plaintiff's share in the property at Door No.120-A, Trivandrum Road, Palayamkottai, Tirunelveli 2, Tirunelveli District, more fully described in the Schedule hereunder.

"b. For Permanent Injunction restraining the defendant, their men or agents or anybody claiming through them or under them from in any way bringing the property for auction on 30.3.2019 or on any other subsequent dates on the strength of the Memorandum of Deposit of Title Deeds registered on 11.8.2008 on the file of Sub Registrar/Central Registrar, Central Chennai."

7. The petitioner claims that no written statement has been filed and the petitioner has indicated to the suit Court that the plaint is liable to be rejected, but an initial order of status quo was passed. Even though such status quo order no longer exists, the suit

continues on the board of the Court. The respondent-plaintiff, on the other hand, says that in view of the written statement not having been filed, the suit may proceed ex parte as against the petitioner herein. The respondent also seeks to assert that, in any event, the reliefs sought in the suit are qua the document purported to be executed by R.Thiagarajan and not against the measures taken by the bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

8. Section 34 of the Act of 2002 provides 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)."

9. There are two parts to the provision which are governed by a

similar embargo. For the first part, no civil Court can entertain a suit or proceedings in respect of certain kinds of matters; and, for the second part, no injunction may be granted by any Court or other authority in respect of certain matters. Generally speaking, in terms of Section 34 of the Act, no civil Court can entertain matters that can be adjudicated before the Debts Recovery Tribunal or the appellate authority under the said Act and no Court or other authority can issue an injunction in respect of any action taken or to be taken in pursuance of any power conferred under the said Act or under the Recovery of Debts and Bankruptcy Act, 1993.

10. Section 17 of the Act of 2002 permits any person aggrieved by any of the measures referred to in Section 13(4) of the Act taken by a secured creditor or its authorised officer to approach the appropriate Debts Recovery Tribunal within 45 days from the date on which such measures have been taken.

11. Clearly, the issuance of notice for sale of a secured asset by a secured creditor amounts to a measure having been taken under Section 13(4) of the Act of 2002. It is another thing that the

respondent herein suggests that the security could never been furnished to the secured creditor for it to be treated as a secured asset since the depositor of the title deeds had no authority to make such deposit. However, for the purpose of both Section 17 of the Act and Section 13 thereof, it is the assertion of the secured creditor which is paramount since adjudication under the Act of 2002 follows execution or implementation, rather than execution or implementation following adjudication in accordance with the general law of the land otherwise.

12. In other words, upon a secured creditor taking any measure in respect of any asset that it claims as its security, any person aggrieved thereby has, per force, only to approach the appropriate Debts Recovery Tribunal and not to invoke the jurisdiction of any other authority. The bar under the first limb of Section 34 of the Act is a bar on the civil Court. When there is a statutory bar on the forum, no lis can be entertained in derogation of such bar, as the forum would inherently be lacking in jurisdiction so to do. The jurisdiction covers the subject-matter of the action and goes to the root of the matter which is incapable of ratification or condonation or

being cured, unlike defects pertaining to pecuniary jurisdiction or territorial jurisdiction which may be overlooked at a late stage in view of Section 21 of the Code of Civil Procedure, 1908.

13. When an adjudicatory forum, even a sovereign forum as a civil Court, is prohibited by the express command of a statute to not receive a class of actions, the very entertaining of such an action would be of no effect and amount to naught. The classical example in this situation was of a Small Causes Court taking up an arbitration matter. The modern classical example is of a civil Court taking up a matter which is covered by the Administrative Tribunals Act, 1985.

14. The respondent's assertion that the respondent merely questioned the propriety of the document and not action of the bank, is fallacious. The bank's action was based on the deposit of title deeds to it. In such sense, the bank's action cannot be severed from the deposit of title deeds and the two seen to be distinct. At any rate, what is of importance is whether the issue that would arise in the suit upon the plaintiff's assertion of a state of facts and the defendant's denial thereof, would be capable of being adjudicated by

the appropriate Debts Recovery Tribunal or the appellate authority as the words in such regard in Section 34 of the Act are "is empowered ... to determine".

15. Since any person aggrieved, in terms of Section 17 of the Act of 2002, has the right to approach the appropriate Debts Recovery Tribunal consequent upon the measures being taken by a secured creditor under Section 13(4) of the Act, the Debts Recovery Tribunal must be seen to be empowered to determine the issue which may arise in such proceedings pertaining to the right of the mortgagor to create the mortgage. As a consequence, the civil Court would have no authority to receive such a suit.

16. In the circumstances, the plaint relating to O.S.No.1852 of 2019 filed before the City Civil Court, Chennai is rejected and the respondent-plaintiff is left free to pursue his remedies in accordance with law.

17. The City Civil Court, Chennai should immediately be informed of this order and a copy of this order should be filed in that

Court by the petitioner bank within a week from date for the record of the suit Court.

18. C.R.P.No.312 of 2020 is allowed as above. There will be no order as to costs. Consequently, C.M.P.Nos.1610 and 1611 of 2020 are closed.

19. Nothing in this order may be construed as a pronouncement on the merits of the claim carried by way of the said suit by the respondent herein and it will be open to the respondent to urge all grounds taken in this suit before any appropriate forum in accordance with law.

20. It is the submission of the respondent that S.A.No.134 of 2020 has been carried by the respondent to the Debts Recovery Tribunal. The observations herein will not prejudice the respondent in such proceedings before the Debts Recovery Tribunal.

(S.B., CJ.)

(S.K.R., J.)

18.03.2021

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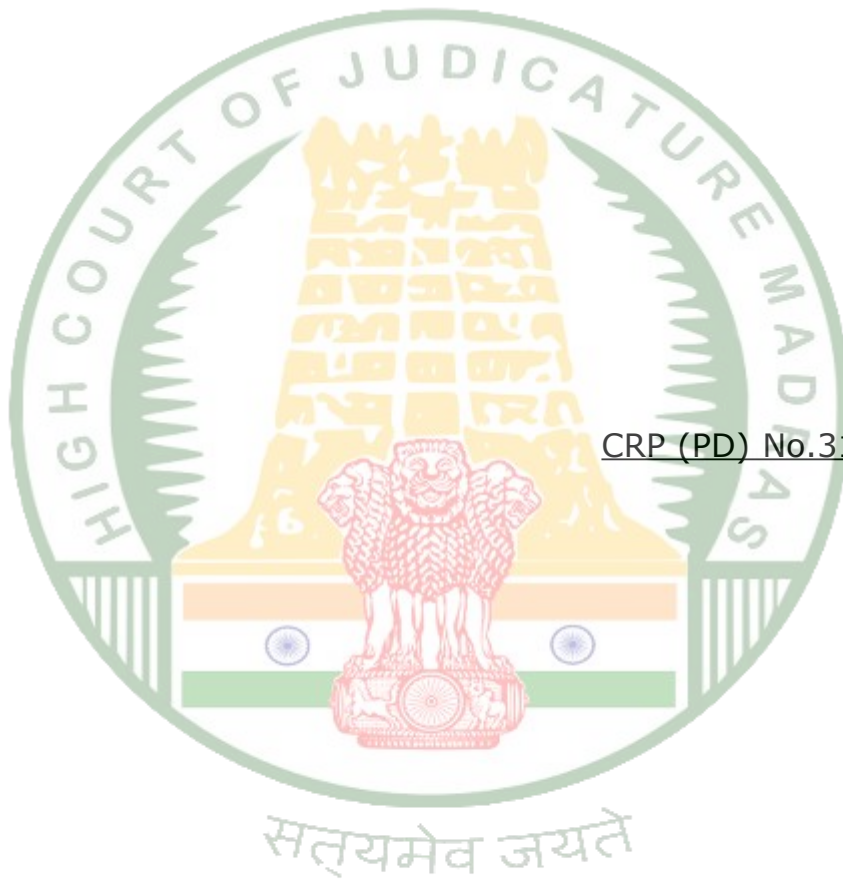
The Branch Manager,  
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Teynampet Branch,  
Chennai - 600 006.



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THE HON'BLE CHIEF JUSTICE  
AND  
SENTHILKUMAR RAMAMOORTHY, J.

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