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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.12.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P.(PD) No.695 of 2019
and C.M.P. No.4537 of 2019

1. A.Karunakaran
2. The Deputy Registrar / Managing Director,
   Arakkonam Co-operative Urban Bank Ltd.,
   Arakkonam – 631 001. ...Petitioners

Versus

S.Theanmozhi ...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to struck off the plaint in O.S. No.106 of 2018 on the file of District Munsif Court, Arakkonam.

For Petitioners : Mr. M.S.Palaniswamy

For Respondent : Mr. S.Gowri Shankar

O R D E R

This Civil Revision Petition is filed to struck off the plaint in O.S. No.106 of 2018 on the file of District Munsif Court, Arakkonam.

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2. The respondent, as plaintiff filed a suit in O.S. No.106 of 2018 on the file of District Munsif Court, Arakkonam. The suit is for permanent injunction restraining the defendants or their agents and servants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The revision petitioners are the defendants in the suit. The case of the revision petitioners is that by a deed of hypothecation, the suit property was hypothecated to the bank by the father of the respondent and his sister by name Kamala. It is the case of the petitioners that the father along with paternal aunt of plaintiff borrowed a sum of Rs.20,000/- originally and discharged the loan. However, there was a subsequent transaction by hypothecating the suit property for the value of Rs.5,00,000/-. It is stated that the borrowers did not repay the amount and the revision petitioners initiated proceeding under the provision of Cooperative Societies' Act. It is admitted that an *ex parte* award was obtained against the plaintiff's father and the sister of plaintiff's father. It is also stated that an execution petition is filed against the father and paternal aunt of the plaintiff in the suit. However, it is also admitted that the plaintiff's father and paternal aunt who are the borrowers died long back. It is brought to the notice of this Court that the legal heirs of borrowers have not been brought on record in Execution Petition as persons interested

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against whom the cause of action survives for the petitioners to take further action. It is in this background of the case, the respondent as plaintiff has filed a suit in O.S. No.106 of 2018 for permanent injunction restraining the petitioners herein from interfering with the plaintiff's peaceful possession and enjoyment of the property in any manner.

3. It is stated that the suit property was the subject matter of an equitable mortgage by which the predecessors in interest of plaintiff had borrowed. Though the revision petitioners are entitled to proceed against the property, they cannot claim absolute title over the property which is still in possession and enjoyment of the respondent in this petition. Though the learned counsel for the petitioner refers to Section 156 of Tamil Nadu Cooperative Societies Act, the said provision has no application to the facts of the case. It is true that there cannot be a suit for injunction restraining the petitioners from taking any action to secure the loan in terms of provisions of Tamil Nadu Cooperative Societies Act. However, that does not give them any privilege to claim right over the property till such time the property is dealt with by a process known to law. In that view of the matter, this Court is of the view that the petitioner is not entitled to seek a prayer to strike off the plaint.

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4. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. It is made clear that the revision petitioners are entitled to proceed against the property in the manner know to law, in the process of recovering the dues by execution.

03.12.2021

Index: Yes/ No
Speaking Order / Non-Speaking Order
bkn

Copy to:

The District Munsif, Arakkonam.

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S.S.SUNDAR, J .,

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C.R.P.(PD) No.695 of 2019

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