IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.12.2020

PRONOUNCED ON : 18.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(PD)No.814 of 2017
CMP.No.3979 of 2017

(Through Video Conferencing)

The Branch Manager, Bank of Baroda
Pethappampatti, Udumalpet ... Petitioner

Vs

1. Raghule Amuthan
2. Nithya ... Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.09.2016, passed in IA.No.227 of 2015 in OS.No.8 of 2015, by the Subordinate Judge, Udumalpet.

For Petitioner : M/s.Sampathkumar and Associates

For Respondent : Mr.C.Prakasam-RR1&2

ORDER

1. This Civil Revision Petition has been filed, to set aside the fair and decreetal order dated 09.09.2016, passed in IA.No.227 of 2015 in OS.No.8 of 2015, by the Subordinate Judge, Udumalpet.
2. The facts of the case, in a nutshell, are that the 2nd Defendant Bank is the Petitioner and the Plaintiffs are the Respondents. The suit was filed for

https://www.mhc.tn.gov.in/judis/
WEB COPY

declaration that the charge created by the Defendant over the suit properties is fraudulent one and is not binding on the Plaintiffs, for permanent injunction and for a preliminary decree for partition. The 2nd Defendant Bank has filed the application, seeking to reject the plaint on the ground of jurisdiction. Since the said application was dismissed by the impugned order, this Civil Revision Petition has been filed by the 2nd Defendant Bank.

3. The learned counsel for the Petitioner has submitted that the suit is a collusive one to defraud the Bank, with whom the suit properties had been mortgaged and that when the property in question is the subject matter of the proceedings initiated before the Debt Recovery Tribunal and said proceedings are pending, the plaint ought to have been rejected and the impugned order refusing to reject the plaint is erroneous and accordingly, this Civil Revision Petition is to be allowed. The learned counsel has relied on **2014 4 LW 559 (M/s.Kotak Mahindra Bank Limited Vs. Dr.K.Priyalatha and others) and 2014 6 CTC 751 (Indian Bank Vs. B.Venkataraman and others)** in support of his contentions.

सत्यमेव जयते
WEB COPY

4. The learned counsel for the Respondents has submitted that the suit properties are ancestral properties and hence, they have every right to file a suit for partition and that even if the partition is effected, the Bank has charge over the share of the 1st Respondent and that if at all any charge is available on the share of the Respondents for the mortgage created, they are ready to settle such dues if the partition is effected and hence, the suit for partition is legally maintainable and accordingly, this Civil Revision Petition is to be

https://www.mhc.tn.gov.in/judis/

dismissed.

5. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
6. The suit has been filed, seeking declaration that the charge created by the Defendant Bank over the suit properties is fraudulent one and is not binding on the Plaintiffs, for permanent injunction and for a preliminary decree for partition. The 2nd Defendant Bank has filed the application, seeking to reject the plaint on the ground of jurisdiction, which was dismissed.
7. Now, it is to be seen as to whether the Civil Court has jurisdiction or not to entertain the suit, when the suit properties are under mortgage with Bank, in respect of which, the debt recovery proceedings initiated by the Bank are pending before the Debt Recovery Tribunal.
8. In this case, admittedly, the suit properties are under mortgage with the Petitioner Bank. In the year 2013, debt recovery proceedings in OA.Nos.84 and 215 of 2013 to recover the dues due to the Bank, have been initiated by the Bank before the Debt Recovery Tribunal against the 2nd Plaintiff and the 1st Defendant in respect of the suit properties and the same are pending.
9. In the application, it is stated that the 1st Respondent is the 3rd Defendant in OA.No.215 of 2013 and the 2nd Defendant is the 1st Defendant in OA.No.84 of 2013 and the 1st Defendant in the suit is the 2nd Defendant in OA.No.84 of 2013 and the 1st Defendant in OA.No.215 of 2013. The plaint schedule properties are the subject matter of dispute before the Debt Recovery Tribunal.

WEB COPY

https://www.mhc.tn.gov.in/judis/

10.Subsequent to the debt recovery proceedings, after two years i.e. in the year 2015, the suit in OS.No.8 of 2015 has been filed against the Bank as well as the family member, for the reliefs as stated above. Though the suit has been filed with a delay of two years, there is no whisper about the pendency of the said debt recovery proceedings before the Debt Recovery Tribunal in the plaint, which would amount to wilful suppression of materials facts.

11.In the counter filed in the application filed by the Plaintiffs, they have stated that the averment that the plaint Schedule properties are subject matter of dispute before the DRT and as per the RDDBI Act, the proper remedy available to the Respondents are to file an application before the Debt Recovery Tribunal and this Court shall not have any jurisdiction to entertain the plaint in view of Section 18 of RDDBI Act and the averment that no injunction shall be granted by any Court or other authority may be true. Thus, it would amount to admission.

12.Section 18 of Recovery of Debts Due to Banks and Financial Institutions Act (RDDBI Act) reads as follows:-

> **"18. Bar of Jurisdiction:-**On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.

13.Section 34 of the SARFAESI Act reads as under:-

> "No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt 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

https://www.mhc.tn.gov.in/judis/

Banks and Financial Institutions Act, 1993 (51 of 1993)."

14. The object of the Act is the speedy recovery of the loan, without the intervention of the Court and such an object would be defeated, if any party approaches a civil Court, challenging the recovery proceedings.

15. In view of the provisions referred to above and applying the same to the case on hand, this Court is of the view that the court below has miserably failed to appreciate the relevant provisions and erred in rejecting the application filed by the Petitioner for rejection of the paint, by the impugned order, which warrants interference by this Court.

16. In fine, this Civil Revision Petition is allowed. No costs. Consequently, the connected MP is closed.

18.02.2021

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The Subordinate Judge, Udumalpet

सत्यमेव जयते
WEB COPY

https://www.mhc.tn.gov.in/judis/

A.A.NAKKIRAN, J.

Srcm

Pre-Delivery Order in
CRP(PD)No.814 of 2017

सत्यमेव जयते
WEB COPY

18.02.2021