IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.09.2022

DELIVERED ON : 13.10.2022

CORAM :
THE HONOURABLE MRS.JUSTICE R. HEMALATHA

A.S.No.60 of 2015
and
M.P.No.1 of 2015

T.Santhi ... Appellant

..Vs..

1.The Karnataka Bank Limited,
Rep. by its Senior Manager,
Anna Nagar Branch,
W-123, III Avenue,
Anna Nagar, Chennai - 600 040.

2.Sri Neelambigai Textiles (P) Ltd.,
Rep. by its Managing Director,
No.7, Alsa Regency,
No.165, Eldams Road,
Alwarpet, Chennai - 600 018.

3.M/s.Thillai Nataraj Chits (P) Ltd.,
Rep. by its Managing Director,
No.7, Alsa Regency,
No.165, Eldams Road,
Alwarpet, Chennai - 600 018.

4.M/s.Alsa Regency,
Rep. by its President,
No.165, Eldams Road,
Alwarpet, Chennai - 600 018.

5.The Asset Reconstruction Company
(India) Ltd., having registered
Office at Shreepati Arcade,
A.K.Marg, Nana Chowk,
Mumbai - 400 036
Represented by its
Constituted Attorney ... Respondents

PRAYER : First Appeal filed under Section 96 C.P.C. read with Order XLI A(1) & 2 CPC,1908 against the decree and judgment dated 22.09.2014 made in O.S.No.9746 of 2010 on the file of the XV Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.R.Thiagarajan

For R1 : Mr.P.Sivasubramaniapandian

For R5 : Mr.Shivakumar & Suresh

JUDGMENT

The present appeal is filed against the decree and judgment dated 22.09.2014 made in O.S.No.9746 of 2010 on the file of the XV Additional Judge, City Civil Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the

present appeal would also be indicated.

3. Briefly the facts of the case of the plaintiff flow as follows :

a) The suit property is part of the larger extent measuring 7 grounds and 1918 sq.ft. situate in R.S.No.1548/26, 1548/47 and 1548/61, Block No.30, Mylapore Division at 165, Eldams Road, Alwarpet, Chennai.

b) The entire property was originally owned by one Murali Padmanabhan and Mukund Padmanabhan who entered into a joint development agreement M/s.Alsa Invesments Pvt. Ltd. The name of the complex "Alsa Regency" is shown as the 4th defendant in the suit.

c) The 3rd defendant M/s.Thillai Nataraj Chits Private Limited had entered into an agreement with the 4th defendant on 04.02.1994 (EX.A1) for purchase of a shop measuring 612 sq.ft. for a consideration of Rs.4,89,000/-. The undivided share of land for this property (the suit property) was conveyed to the 3rd defendant M/s.Thillai Nataraj Chits Private Limited by way of three different sale deeds dated 20.05.1994 (Ex.A2 series) and registered as

Document Nos.457, 458 and 459/94 on the file of the District Registrar, Madras Central.

d) The 3rd defendant had mortgaged the suit property to three different persons P.Logan, L.Mohana and D.Murugan for a consideration of Rs.4,00,000/- each by way of simple mortgage deeds dated 13.10.1997 (Ex.A3 to Ex.A5).

e) On 25.06.2003, the 3rd defendant sold the suit property for a consideration of Rs.10,00,000/- by a sale deed Ex.A8 to the plaintiff and immediately thereafter, there was a deed of rectification dated 07.08.2003 (Ex.A9) in favour of the plaintiff to rectify a bona fide mistake made in mentioning the area of undivided share of land.

f) According to the plaintiff, she was informed about the existence of the mortgage of the suit property prior to this sale. The amount paid to the 3rd defendant was utilised to discharge the mortgage loans and she also obtained the original sale deeds and cancelled mortgage deeds.

g) The plaintiff had also after obtaining the legal opinion dated 30.11.2004 (Ex.A10) availed an educational loan for her son from

Indian Bank and the suit property was offered as collateral security. The plaintiff had also transferred the property tax (Ex.A11, Ex.A16 and Ex.A17) and EB connection (Ex.A19 to Ex.A21) in her name and was also in possession of an encumbrance certificate (Ex.A12) obtained prior to the sale.

h) In the meanwhile, the 2nd defendant M/s.Sri Neelambigai Textiles (P) Ltd., had availed certain credit facilities from the 1st defendant the Karnataka Bank Limited as early as 1996 and since the recovery in the account was not forthcoming the 1st defendant had initiated SARFAESI proceedings before Debts Recovery Tribunal (DRT) - II, Chennai in O.A.No.668 of 2001. The suit property owned by the 3rd defendant was offered as collateral security to the 1st defendant Bank for the said loan. Therefore, the Recovery Officer, DRT-II, Chennai had initiated proceedings in D.R.C.No.52/2004 dated 22.03.2004 attaching the suit property and fixing the date of auction as 16.02.2005.

i) The plaintiff on coming to know about this auction of the suit property filed her objections before the Recovery Officer, DRT-II, Chennai. She also requested the mortgagee of the suit property i.e.

Indian Bank, Adyar Branch, Chennai, where she had availed an educational loan of Rs.5,00,000/- for her son by offering the suit property as collateral security, to produce all the related documents pertaining to the suit property.

j) The Recovery Officer, DRT-II, Chennai, refused to stop the auction on 24.02.2005 which prompted the plaintiff to file C.S.No.163/2005 before this Court to declare the recovery proceedings by DRT-II, Chennai in O.A.No.668 of 2001 as illegal and null & void and also for a permanent injunction restraining the 1st defendant from conducting the auction on 24.02.2005 and restraining the defendants 1 to 4 from interfering with her peaceful possession and enjoyment of the suit property.

k) Subsequently, C.S.No.163/2005 was transferred to City Civil court, Chennai on the point of pecuniary jurisdiction and renumbered as O.S.No.9746 of 2010.

4.The defendants 2 to 4 remained absent and were set *ex parte.* The 1st defendant filed a written statement which was adopted by the 5th defendant. In the written statement it was contended that the 3rd defendant had mortgaged the suit property as the guarantor for the loan availed by the 2nd defendant from the 1st defendant bank as early as 1996 itself. Moreover, when an objection was received by DRT, the DRT was in a position to peruse the copies of the sale deeds in favour of the plaintiff and compare them with those submitted by the 1st defendant bank in DRT. The Recovery Officer found that the sale deeds produced by the plaintiff were fabricated. The defendants had also pointed out that the power agent of the plaintiff's vendor (the 3rd defendant) was none other than the husband of the plaintiff which arose further suspicion as to the intention of the plaintiff as well as the 3rd defendant. According to the defendants the plaintiff was not a bona fide purchaser of the suit property and therefore, cannot claim any right over the suit property as mentioned in her plaint. They, therefore, prayed for dismissal of the suit.

5.The learned XV Additional Judge,City Civil Court, Chennai, framed the following issues :

(1) Whether the plaintiff is a bona fide purchaser of the suit schedule property?

(2) Whether 3rd defendant has created valid equitable mortgage in

favour of the first defendant regarding suit schedule property?

(3) Whether the suit is hit by Section 34 of SARFAESI Act?

(4) Whether the plaintiff is entitled to the decree for declaration as prayed?

(5) Whether the plaintiff is entitled to the decree for permanent injunctions as prayed?

(6) To what relief the plaintiff is entitled?

6. In the trial Court, the plaintiff and her husband were examined as P.W.1 & P.W.2 and 29 documents were marked as Ex.A1 to Ex.A29. On the side of the defendants, the 5th defendant was examined as DW1 and two documents were marked as Ex.B1 & Ex.B2.

7. After full contest, the learned XV Additional Judge, City Civil Court, Chennai, dismissed the suit vide his decree and judgment dated 22.09.2014 by observing that the plaintiff is not a bona fide purchaser of the suit schedule property and that the 3rd defendant has created a valid equitable mortgage regarding the suit schedule property in favour of the 1st defendant.

8. Aggrieved over the decree and judgment dated 22.09.2014 the present appeal is filed by the plaintiff.

9. Mr.R.Thiagarajan, learned senior counsel appearing for the plaintiff would contend that the plaintiff was not aware of any such transactions alleged to have been made by her vendor prior to the purchase of the suit property. According to him, the mortgage loans in the the name of the 3rd defendant were all settled through the sale consideration amount paid by her and she was in possession of redeemed mortgage deeds as well as the sale deeds executed by the original owners in favour of the 3rd defendant. It was also contended that the encumbrance certificate which was obtained at the time of her purchase showed only P.Logan, L.Mohana and D.Murugan as mortgagees of the suit property and since she had settled the loans and also held the mortgage redemption certificates, she is a bona fide purchaser and has every right to defend her title. It was also argued that the 5th defendant did not get the assignment deed registered in Tamilnadu and therefore assignment in favour of the 5th defendant by the 1st defendant was null and void. He relied on the decision in ***"Veena Textile Limited Vs. The Authorised***

Officer, IFCI Limited" reported in ***"2014 (5) CTC 209 (Mad)"*** in support of his contention. Another contention put forth by him was that the recovery certificate issued by the Recovery Officer was not binding on the plaintiff and therefore the dismissal of the suit itself was erroneous.

10. Per contra, Mr.P.Sivasubramaniapandian, learned counsel appearing for the 1st respondent and Mr.Shivakumar & Suresh, learned counsel appearing for the 5th respondent contended that the subject matter of assignment was totally irrelevant to the facts of the present case and it was only a diversionary tactic. It was their further contention that the suit was filed by the plaintiff on 23.02.2005 and more than five years later the plaintiff had written a letter on 14.06.2010 addressed to the 1st defendant stating that she was willing to make an one time settlement by paying Rs.12,00,000/- to the 1st defendant bank and also admitting that her vendor (3rd defendant) had fabricated the records and sold the suit property to her and that this letter was marked as Ex.B1. Another contention of the counsel for the contesting defendants was that instead of suing the 3rd defendant, who was her vendor and who had purportedly forged the sale deeds, the act of the plaintiff in filing a suit against the 1st

and 5th defendants smacks of collusion amongst the plaintiff, 2nd and 3rd defendants in order to evade the recovery proceeding and consequent auction. It was also contended that the suit itself is barred under Section 34 of the SARFAESI Act. In such circumstances, it was contended by the counsel for the defendants that the case of the plaintiff was devoid of merits and liable to be dismissed.

11. Now the points for consideration to be decided in the instant appeal are as follows :

(1) Whether the plaintiff is a bona fide purchaser for value and was unaware of the equitable mortgage effected by the 3rd defendant as a guarantor for the loan availed by the 2nd defendant from the 1st defendant bank?

(2) Whether there is any collusion amongst the defendants 2 & 3 and the plaintiff as alleged by the defendants 1 and 5?

(3) Whether the assignment deed with regard to the suit property executed by the 1st defendant in faovur of the 5th defendant has any legal validity as the same was registered out of Tamilnadu?

(4) Whether the suit is not maintainable due to an express bar

contained in Section 34 of the SARFAESI Act?

12. **Points 1 & 2 :**

A careful scrutiny of the oral and documentary evidence adduced by both sides as well as the chronological events shows that the plaintiff was aware of the equitable mortgage effected by the 3rd defendant (her vendor) in respect of the suit property in favour of the 1st defendant bank. The plaintiff has also not adduced any documentary evidence for having settled the mortgage loan said to have been availed by the 3rd defendant. It is also evident from exhibits A23 to A25 which were addressed to the 3rd defendant demanding repayment of the three mortgage loans of Rs.5,00,000/- each availed by the 3rd defendant by creating a simple mortgage of the suit property (the undivided share of which was in the form of three separate sale deeds). The 3rd defendant in his reply notice dated 14.02.1998 (Ex.A26) had claimed that though the three simple mortgage deeds were executed by the 3rd defendant company they never received the loan amount of Rs.12,00,000/- (Rs.4,00,000/- from each of the mortgagee) after deducting Rs.60,000/- towards stamp duty and registration expenses as agreed upon. According to the 3rd defendant, one Mohammed Ali had promised the loan amount and he did not keep up to the promise of getting the full loan amount -- stamp/registration charges. It was also alleged by the 3rd defendant that all the three creditors were not known to them and that they were all total strangers.

13. Another disturbing aspect is that even as early as 20.12.1999, a resolution (Ex.A6) was passed by the 3rd defendant nominating the plaintiff's husband as Power of Attorney and subsequently on 24.01.2000, a general Power of Attorney (Ex.A7) was executed by the 3rd defendant in favour of the plaintiff's husband M.Thirupathi. It is also true that the sale deed (Ex.A8) dated 25.06.2003 in favour of the plaintiff for a sale consideration of Rs.10,00,000/- for the suit property was executed by the plaintiff's husband who was holding the Power of Attorney of the 3rd defendant. Ex.B1, the letter written by the plaintiff to the 1st defendant bank alleges fabrication of documents by the 3rd defendant. Though the act of an agent is as good as the act of the principal it is clear that even in 2003 when the sale deed was executed in favour of the plaintiff, the plaintiff was fully aware of the 'validity' of the sale deed

and other documents. It is also pertinent to mention that the plaintiff did not adduce the so called cancelled mortgage deeds from the three creditors, namely, P.Logan, L.Mohana and D.Murugan. The sequence of events following the issuance of legal notices on 16.01.1998 and receipt of the reply legal notice again on 14.02.1998 followed by the resolution for the Power of Attorney on 20.12.1999 and execution of General Power of Attorney had all happened in a short span of time one after the other lending credence to the theory of collusion and conspiracy by the plaintiff and the 3rd defendant and her husband M.Thirupathi.

14. Though the plaintiff has claimed that the encumbrance certificate for the suit property Ex.A12 showed the mortgagees as P.Logan, L.Mohana and D.Murugan, she has not produced any encumbrance certificate post the sale deed dated 25.06.2003 executed in her favour to substantiate that the mortgages were redeemed. Had this encumbrance certificate been produced it ought to have shown nil encumbrance for the suit property. However, it is doubtful as to whether the 2nd defendant had any role to play in the entire episode. He could not have conspired or colluded for the simple reason that the suit property

was not in his name and his liability to the 1st defendant co-existed with that of the guarantor (3rd defendant). Therefore, it is clear that the 3rd defendant with the help of the plaintiff and her husband had played a fraud on the 1st defendant bank fervently hoping to save the suit property from going out of the 3rd defendant's hands. No purchaser can be bonafide when he / she is involved in creating fabricated or fake record which tantamount to fraud. She is therefore not entitled to the right of redemption of mortgage. In the decision in ***Vidihadhar vs. Manikrao and another*** reported in ***(1999) 3 SCC 573*** relied upon by the learned senior counsel for the petitioner with regard to redemption of mortgage by the purchaser would not apply to the facts of the present case. Accordingly, points No. 1 & 2 are answered against the plaintiff.

15. **Points No.3 & 4**

Yet another contention of the learned senior Counsel appearing for the appellant is that the assignment deed executed by the 1st defendant in favour of the 5th defendant assigning the debt along with under lying securities being immovable properties lying in Tamilnadu but registered beyond Tamilnadu is null and void and *non est* in view of the provisions of Clause (a) of Section 28 of the Registration Act. His specific contention is that the 5th defendant has no right to conduct the suit before the DRT. In support of his contention he relied on the following decisions

1) ***Veena Textile Limited Vs. The Authorised Officer, IFCI Limited"*** reported in ***"2014 (5) CTC 209 (Mad).***
2) ***Arc Investments Castings Lip reported in 2021 (5) CTC 422 (Mad)***

wherein it has been held that the deed of assignment registered outside the state of Tamilnadu in contravention of the provisions of the Clause (a) of Section 28 of the Registration Act shall be deemed to be null and void. However, in the instant case, the 5th defendant was impleaded as a party to the suit subsequent to the filing of the suit by way of filing a petition in I.A. No.29/2012. It is also important to point out that there is no prayer as against the 5th defendant in the suit and also there is no pleading in the plaint with regard to the validity of the assignment deed. However, the learned senior counsel appearing on behalf of the appellant would contend that since this is a question of law, the same need not be pleaded in the plaint. In any event, in the present suit, the validity of the assignment deed is not the main issue and therefore it need not be adjudicated here. The plaintiff, in fact is trying to deflect the issue. It has also been held that the plaintiff is not a bonafide purchaser and fabrication of documents was admitted by the plaintiff through one of her communications to the bank. Therefore, the power of assignee to conduct the suit before the DRT cannot be questioned before this court in a suit filed by the plaintiff, which is also hit by Section 34 of the SARFAESI Act. Section 34 of the SARFAESI Act reads thus:

> **Section 34 in The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002**
>
> 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).

A careful scrutiny of Section 34 of the SARFAESI Act clearly reveals that no civil court has jurisdiction to entertain a suit 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. Section 18 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, 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.

Thus under Section 18, no court or any authority shall be entitled to exercise the jurisdiction of the Tribunal Under Section 17 of the said Act except the Supreme Court or the High Court under articles 226 and 227 of the Constitution. In fact, the trial court has passed a well considered order and held that the suit is hit by Section 34 of the SARFAESI Act. The trial Court had relied on several decisions of this Court as well as the High Court of Bombay and Andhra Pradesh with regard to the maintainability of the suit. Moreover, a bare perusal of the pleadings in the plaint shows that there is no averment or allegation that the secured creditor committed fraud before the DRT. No evidence was also adduced to that effect. In such circumstances, the present suit is hit by Section 34 of the SARFAESI Act. Hence, points No. 3 and 4 are answered against the plaintiff.

16. In the result,

i. The Appeal Suit is dismissed. No costs. Consequently connected miscellaneous petition is dismissed.

ii. the decree and judgment dated 22.09.2014 made in O.S.No.9746 of 2010 on the file of the XV Additional Judge, City Civil Court, Chennai, is upheld.

13.10.2022

Index : Yes/No
Internet : Yes/No
bga

R. HEMALATHA, J.

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To

1. The XV Additional City Civil Court, Chennai.
2. The Section Officer, V.R. Section, High Court, Madras.

A.S.No.60 of 2015
and M.P.No.1 of 2015

13.10.2022