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C.R.P(PD).Nos. 3364 & 3365 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.(PD).Nos. 3364 & 3365 of 2015

and C.M.P.Nos.1 & 1 of 2015

R.Anantharaman

... Petitioner in both the C.R.Ps

Vs

1.S.P.Dhanalakshmi

2.GIC Housing Finance Ltd.,

Represented by its Authorised Signatory,

Pottu Sriinivas,

216 & 217, Peters Road,

Royapettah, Chennai – 600 014. ... Respondents in both the C.R.Ps

Prayer in C.R.P.No.3364 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Decree and Judgment dated 28.04.2015 of the learned XV Assistant Judge, City Civil Court, Chennai in I.A.No.15794 of 2014 in O.S.No.5671 of 2013 under XIV Rule 1, 2 & 5 Read with Order XV Rule 3 and Section 151 C.P.C.

Prayer in C.R.P.No.3365 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Decree and Judgment dated 28.04.2015 of the learned XV Assistant Judge, City Civil Court, Chennai in I.A.No.15796 of 2014 in O.S.No.5671 of 2013 under Order VII Rule 1 read with Section 151 C.P.C. for rejection of plaint.



For Petitioner in
both the C.R.Ps : Mr.P.B.Sampathkumar

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For Respondents in
both the C.R.Ps : Mr.K.V.Bhashyam Chari for R1

COMMON ORDER

Both the Civil Revision Petitions arises out of a common order passed by the Court below in I.A.Nos.15794 and 15796 of 2014 in O.S.No.5671 of 2013, dated 28.04.2015 dismissing the applications filed by the petitioner/ 1st defendant under Order VII Rule 11 C.P.C. for rejection of plaint and for deciding the Court Fee under Section 12 of the Tamil Nadu Court Fees and Suit valuation Act as a preliminary issue.

2.The 1st respondent/ plaintiff filed a suit in O.S.No.5671 of 2013 against the petitioner and the 2nd respondent seeking for the relief of permanent injunction restraining the defendants from creating any encumbrance in the suit property. The cause of action for filing the suit was that there was joint venture agreement between the builder and the father of the petitioner/ 1st defendant and as per the documents that were filed in support of the plaint, the plaintiff is the absolute owner of the property in possession and enjoyment of the same and that the defendants



attempted to question the legal right of the plaintiff and create encumbrance over the property. On this ground, the suit came to be filed for the relief of permanent injunction.

3.The petitioner/ 1st defendant filed I.A.Nos.15794 and 15796 of 2014 for rejection of plaint under order VII Rule 11 of C.P.C. On the ground that the suit itself is barred by virtue of the Section 34 of the Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act 2002 (Act 54 of 2002) (hereinafter referred to as SARFAESI Act). The petitioner also filed I.A.No.15795 of 2014 to adjudicate the payment of the Court Fee under Section 12 of the Court Fee and Suit Valuation Act, as a preliminary issue. These petitions were filed by the petitioner/ 1st defendant on the ground that the proceedings were initiated by the 2nd respondent/ 2nd defendant under the SARFAESI Act to recover the loan amount from the plaintiff and during the said process, an order was obtained under Section 14 of the Act from the Chief Metropolitan Magistrate, Egmore and an attempt was made to take over the flat that was in possession and enjoyment of the petitioner/ 1st defendant. Immediately, the petitioner filed an application before the Debt Recovery Tribunal-I, Chennai, challenging the order passed under



Section 14 of SARFAESI Act. The Tribunal after hearing both sides came to a conclusion that the 2nd respondent/ bank did not produce any evidence to show that the property in question was subjected to mortgage and that the petitioner was not put on notice before action was initiated under Section 14 of the SARFAESI Act. The Tribunal found that the notice under Section 13(4) of the SARFAESI Act was not even issued to the petitioner.

4.The above order was put to challenge by the 1st respondent/ plaintiff before this Court in W.P.No.35156 of 2012 and this Court dismissed the Writ Petition through an order dated 06.08.2013. It is stated that this order has become final and no further steps were taken.

5.It is under these circumstances, the 1st respondent/ plaintiff filed a suit as if she is in possession and enjoyment of the property and that steps are being taken by the defendants to deny her right and create encumbrance over the property.

6.The applications came to be filed by the petitioner/ 1st defendant on the ground that the suit itself is not maintainable in view of the bar



under Section 34 of the SARFAESI Act and the sum and substance of the pleadings in the suit clearly pointed out that the 1st respondent/ plaintiff was only seeking for declaring her right and title over the property and the same has been done without paying appropriate Court Fees under the Tamil Nadu Court Fees and Suit Valuation Act. The Court below dismissed all the applications through a common order dated 28.04.2015 and it was held that the contentions that were raised by the petitioner/ 1st defendant can be gone into only at the time of deciding the main suit and that there is no ground to reject the suit. Aggrieved by the same, these Civil Revision Petitions have been filed before this Court.

7. Heard Mr.P.B.Sampathkumar, learned counsel appearing for the petitioner and Mr.K.V.Bhashyam Chari, learned counsel appearing for the 1st respondent.

8. The short question that arises for consideration in the present case is as to whether the suit initiated by the 1st respondent/ plaintiff is sustainable in view of the bar contained under Section 34 of the SARFAESI Act. That apart, the 1st respondent/ plaintiff has proceeded as if she is in possession and enjoyment of the property and even as per the



pleadings contained in the plaint filed in the suit, the 1st respondent/ plaintiff clearly admitted that she is not in possession of the suit property.

A careful reading of the plaint goes to show that the 1st respondent/ plaintiff wants a declaration of title over the suit property and whereas, the suit has been filed seeking for relief of permanent injunction alone.

9.The 1st respondent/plaintiff was a party to the proceedings before the Debt Recovery Tribunal. When the petitioner/ 1st defendant filed an application challenging the order under Section 14 of the SARFAESI Act, curiously, the 1st and 2nd respondents (borrower and lender) filed a common affidavit and contested these applications. The Debt Recovery Tribunal through order dated 12.09.2012 allowed the application filed by the petitioner mainly on the ground that the 2nd respondent/ bank did not even issue a notice under Section 13(4) of the SARFAESI Act to the petitioner and hence all the consequential proceedings becomes illegal. This order passed by the Debt Recovery Tribunal has become final since the challenge made to it in W.P.No.35156 of 2012 was dismissed by this Court.

10.The unholy relationship between the 1st respondent/ plaintiff



and the 2nd respondent bank is continuing even in the suit since they filed a common counter affidavit in the applications that were filed by the petitioner. This clearly shows that the 2nd respondent bank is attempting to achieve indirectly what was not able to be achieved by initiating proceedings under the SARFAESI Act. The 1st respondent/ plaintiff has admitted that she is not in possession of the suit property. The gravamen of the allegations made by the 1st respondent is that the petitioner/ 1st defendant is denying her right and title over the suit property and has merely sought for the relief of permanent injunction not to encumber/ alienate the suit property.

11. Section 34 of the SARFAESI Act clearly bars a suit. The Court below rejected the application on the ground that the 1st respondent/ plaintiff is attempting to protect her possession in the suit property and hence the bar under Section 34 of the SARFAESI Act will not apply. This finding rendered by the Court below, on the face of it is illegal and perverse. It runs contrary to the very pleading of the 1st respondent/ plaintiff. The overall reading of the plaint shows that the 1st respondent/ plaintiff is only attempting to establish her right and title over the suit property. This attempt made by the 1st respondent/ plaintiff should have



been resisted by the 2nd respondent bank, if really the suit property was given as a security at the time of giving loan to the 1st respondent. Curiously, the 2nd respondent bank is supporting the case of the 1st respondent and that clearly establishes lack of bonafides on the part of the respondents.

12.This Court in more than one judgment has made it very clear that action initiated by the bank cannot be made a subject matter in a suit. Useful reference can be made to the Division Bench judgment of this Court in *V.Thulasi Vs. Indian Overseas Bank, Chennai* reported in *2011 (8) MLJ 441* and also the judgment of the Apex Court in *Jagdish Singh Vs. Heeralal & Others* reported in *2013 (8) MLJ 84*.

13.The Court below has proceeded under the premise that the suit is maintainable by relying upon the judgment of this Court in *State Bank of India Vs. Gopal @ Gopalan and another* reported in *2009 (1) CTC 449*. This finding was rendered on the ground that the plaintiff is not seeking any relief to stall the proceedings initiated under the SARFAESI Act. The Court below failed to notice that the proceedings initiated by the 1st respondent/ plaintiff is only to establish her right and title over the



suit property and thereby make this property a subject matter of the SARFAESI proceedings. This attempt made by the 2nd respondent bank was thwarted by the Debt Recovery Tribunal and confirmed by this Court and the plaintiff is indirectly trying to restore *status quo ante*. The suit itself is an abuse of process of law which has been initiated with the unwholly alliance of the borrower and the lender to defeat the rights of the petitioner/ 1st defendant. Hence this Court has to necessarily exercise its jurisdiction under Article 227 of the Constitution of India and strike down the suit. The continuation of the proceedings as against the petitioner/ 1st respondent will amount to abuse of process of Court and the same requires the interference of this Court.

14. In the light of the above discussion, the suit filed by the 1st respondent/ plaintiff in O.S.No.5671 of 2013 is hereby struck off from the file of XV Assistant Judge, City Civil Court, Chennai and these Civil Revision Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

12.12.2022

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Speaking Order/ Non Speaking Order
Index: Yes/ No



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N. ANAND VENKATESH, J.

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To

The XV Assistant Judge,
City Civil Court, Chennai.

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