



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 25TH DAY OF FEBRUARY 2022

THE HON'BLE MR. JUSTICE P. VELMURUGAN

C.S.No. 258 of 2021

and

O.A.No. 512 of 2021

and

A.No. 4127 of 2021

C.S.No. 258 of 2021 & O.A.No. 512 of 2021 :-

1. Ms. Shobashalini Chokkalingam, Aged 48 years,
D/o. T. Chockkalingam,
Old Door No.3, New Door No.5,
Ganesh Street,
Gopalapuram, Chennai – 600 086.
Rep.by her Power Agent
Mr.K.Suresh, S/o. C.K. Prabhakaran,
Residing at
6th Block, Door No.815,
2nd Floor, Muggapair West,
Chennai – 600 037.
2. Prema Chokkalingam, Aged about 74 years,
W/o. T. Chockkalingam,
Old Door No.3, New Door No.5,
Ganesh Street,
Gopalapuram, Chennai – 600 086.
Rep.by her Power Agent
Mr.K.Suresh,
S/o. C.K. Prabhakaran,
Residing at
6th Block, Door No.815,
2nd Floor, Muggapair West,
Chennai – 600 037.



1. S. Ramesh,
S/o. K. Sundresan,
Anuvignesh Apartments,
No.46/1, New No.08/1,
Nayakkamar Street,
West Mambalam,
Chennai – 600 033.
2. Mr. E. Moorthy,
S/o. Elumalai, K.S.
VGN KORNA, 66, 67, 68, S1 2nd Floor,
Gerugambakkam,
Chennai – 600 122.
3. G. Tamizharasan,
S/o. Ganesan,
No.53, Shakmaniyam Street,
Porur, Chennai – 600 116.
4. M/s. State Bank of India,
Ekkadutangal Branch,
No.5, Jawaharlal Nehru Road,
Ekkadutangal,
Chennai – 600 096.
5. M/s. Axis Bank,
No.66, Pammal Main Road,
Pallavaram,
Chennai – 600 043.
6. M/s. Citi Bank,
Acropolis-9th Floor, New No.148, (Old No.68),
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.
7. M/s. IIFL Home Finance Ltd.,
Formerly known as India Infoline Housing Finance Ltd (IIFL),
Having its Office
No.1, Klacis Tower, 3rd Floor,
North Usman Road,
T.Nagar, Chennai – 600 017.



8. The Sub-Registrar,
Chennai Central Joint I,
182, Pycrofts Road,
Express Estate,
Royapettah,
Chennai – 600 014.

... Defendants/Respondents

C.S.No. 258 of 2021 :-

Civil Suit praying that this Hon'ble Court be pleased to pass Judgment and Decree against the defendants :

a) to declare forged POA dated 16.05.2016 created by 1, 2nd defendant and adjudicated as Doc.No. 21/2016, on 24.05.2016 as null and void.

b) to declare the Sale Deed dated 02.06.2016 executed by the 1st Plaintiff (Rep.by her Power Agent 2nd Plaintiff) in favour of 2nd Defendant, registered as Doc.No.651 of 2016, at the office of 8th Defendant as null and void and

c) Consequently declare that the 1st Plaintiff as lawful owner of the suit schedule mentioned property.

d) to grant permanent injunction restraining the defendants, their men, agents, servants, legal heirs, representative whomsoever from alienating encumbering entering or trespassing or disturbing or whatsoever thereby preventing the Plaintiffs from their free ingress and egress in the suit schedule mentioned property.

e) to direct the Defendants to pay the cost of this suit.

**O.A.No. 512 of 2021 :-**

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Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondents or their men or agent or any one acting on their behalf from alienating the said schedule mentioned property to any other person pending disposal of the above suit.

A.No. 4127 of 2021 :-

M/s. State Bank of India,
Ekkadutangal Branch,
No.5, Jawaharlal Nehru Street,
Ekkadutangal,
Chennai – 600 096.

... Applicant/Fourth defendant

-Vs-

1. Ms. Shobashalini Chokkalingam, Aged about 48 years,
D/o. T. Chockkalingam,
Old Door No.3, New Door No.5,
Ganesh Street,
Gopalapuram, Chennai – 600 086.
Rep.by her Power Agent
Mr.K.Suresh, S/o. C.K. Prabhakaran,
Residing at
6th Block, Door No.815,
2nd Floor, Muggapair West,
Chennai – 600 037.
2. Prema Chokkalingam, Aged about 74 years,
W/o. T. Chockkalingam,
Old Door No.3, New Door No.5,
Ganesh Street,
Gopalapuram, Chennai – 600 086.
Rep.by her Power Agent



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Mr.K.Suresh,
S/o. C.K. Prabhakaran,
Residing at
6th Block, Door No.815,
2nd Floor, Muggapair West,
Chennai – 600 037.

...Respondents 1,2/Plaintiffs

3. S. Ramesh,
S/o. K. Sundresan,
Anuvignesh Apartments,
No.46/1, New No.08/1,
Nayakkamar Street,
West Mambalam,
Chennai – 600 033.

4. Mr. E. Moorthy,
S/o. Elumalai, K.S.
VGN KORNA, 66, 67, 68, S1 2nd Floor,
Gerugambakkam, Chennai – 600 122.

5. G. Tamizharasan,
S/o. Ganesan,
No.53, Shakmaniyam Street,
Porur, Chennai – 600 116.

... Respondents 3 to 5/Defendants 1 to 3

6. M/s. Axis Bank,
No.66, Pammal Main Road,
Pallavaram,
Chennai – 600 043.

7. M/s. Citi Bank,
Acropolis-9th Floor, New No.148, (Old No.68),
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

8. M/s. IIFL Home Finance Ltd.,
Formerly known as India Infoline Housing Finance Ltd (IIFL),
Having its Office
No.1, Klacis Tower, 3rd Floor,
North Usman Road,
T.Nagar, Chennai – 600 017.



9. The Sub-Registrar,
Chennai Central Joint I,
182, Pycrofts Road,
Express Estate,
Royapettah,
Chennai – 600 014.

... Respondents 6 to 9/Defendants 5 to 8

Application praying that this Hon'ble Court be pleased to reject the
plaint on the ground of territorial jurisdiction as well as in terms of Section
34 of SARFAESI Act and Section 18 of Recovery of Debts and Insolvency
Act.

This Civil Suit along with these applications having been heard on
07.02.2022 in the presence of Ms.K.Bhuvaneshwari, Advocate for the
plaintiffs in C.S.No. 258 of 2021 and for the applicants in O.A.No. 512 of
2021 and for the respondents 1 and 2 in A.No. 4127 of 2021 and
Mr.C.P.Sasikumar, Advocate for the 2nd defendant in C.S.No. 258 of 2021
and for the 2nd respondent in O.A.No. 512 of 2021 and for the 4th respondent
in A.No. 4127 of 2021 and Mr.M.L.Ganesh, Advocate for the 4th defendant
in C.S.No. 258 of 221 and for the 4th respondent in O.A.No. 512 of 2021
and for the applicant in A.No. 4127 of 2021 and Mr.V.V.Sivakumar,
Advocate for the 5th defendant in C.S.No. 258 of 2021 and for the 5th
respondent in O.A.No. 512 of 2021 and for the 6th respondent in A.No.4127



of 2021 and Mr.P.Veeramalai, Advocate for the 6th defendant in C.S.No.258 of 2021 and for the 6th respondent in O.A.No. 512 of 2021 and for the 7th respondent in A.No. 4127 of 2021 and Mr.Bala Subramani Velan, Advocate for the 7th defendant in C.S.No. 258 of 2021 and for the 7th respondent in O.A.No. 512 of 2021 and for the 8th respondent in A.No. 4127 of 2021 and the defendants 1, 3 and 8 in C.S.No. 258 of 2021 and the respondents 1, 3 and 8 in O.A.No. 512 of 2021 and the respondents 3, 5 and 9 in A.No. 4127 of 2021 not appearing in person or by advocate and upon reading the plaint filed in C.S.No. 258 of 2021 and the order dated 16.12.2021 made in O.A.No.512 of 2021 and A.No. 4127 of 2021 in C.S.No. 258 of 2021 and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of the said advocates for the parties hereto, and this Court is of the view that the suit is hit by the provisions of section 18 of RDDB and FI Act and Section 34 of SARFAESI Act and hence, the merits of the case need not be gone into,

it is ordered as follows :-

That the plaint in C.S.No. 258 of 2021 be and is hereby rejected.

2. That the respondents/plaintiffs herein shall be at liberty to work out their remedies in the manner known to law.



WEB COPY 3. That the O.A.No. 512 of 2021 do stand closed.

4. That there shall be no order as to costs.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH
BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS
AFORESAID, THIS THE 25TH DAY OF FEBRUARY 2022.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies
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07.03.2022

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C.S.No. 258 of 2021
and
O.A.No. 512 of 2021
and
A.No. 4127 of 2021

ORDER

DATED : 25.02.2022

THE HON'BLE MR. JUSTICE
P. VELMURUGAN

FOR APPROVAL: 17/03/2022

APPROVED ON: 17/03/2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2022
PRONOUNCED ON : 25.02.2022

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

C.S.No.258 of 2021
O.A.No.512 of 2021 & Application No.4127 of 2021

1. Ms.Shobashalini Chokkalingam .. 1st plaintiff/1st respondent
Rep. by her power agent, in A.No.4127/2021
Mr.K.Suresh

2. Prema Chockkalingam,
Rep. by her power agent,
Mr.K.Suresh .. 2nd plaintiff/2nd respondent
in A.No.4127/2021

vs.

1.S.Ramesh

2.E.Moorthy

3.G.Tamilzharasan

4.M/s.State Bank of India
Ekkadutangal Branch,
No.5, Jawaharlal Nehru Street,
Ekkadutangal,
Chennai – 600 096

.. Applicant in A.No.4127 of 2021/
4th defendant in C.S.No.258 of 2021

5.M/s.Axis Bank,
No.66, Pammal Main Road,
Pallavaram, Chennai – 600 043.



6.M/s.Citi Bank,
Acropolis - 9th Floor,
New No.148 (Old No.68),
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

7.M/s.IIFL Home Finance Ltd.,
Formerly known as India Infoline
Housing Finance Ltd (IIFL),
Having its office
No.1, Klacis Towers, 3rd floor,
North Usman Road,
T.Nagar, Chennai -600 017.

8.The Sub – Registrar
Chennai Central Joint I,
162, Pycrotts Road, Express Estate,
Royapettah, Chennai – 600 014.

.. Defendants

A.No.4127 of 2021

Application filed under Order XIV Rule (8) of Madras High Court
Original Side Rules read with Order VII Rule 11 (C) of the Civil Procedure
Code 1908 to reject the plaint in C.S.No.258 of 2021.

C.S.No.258 of 2021 under Order VII Rule 1 of the Civil Procedure Code
and Order IV of the Original Side Rules seeking a judgment and decree (a)
to declare forged POA dated 16.05.2016 created by 1st and 2nd defendants
and adjudicated as Doc.No.21/2016 on 24.05.2016 as null and void; (b) to
declare the Sale Deed dated 02.06.2016 executed by the 1st Plaintiff (Rep.
by her Power Agent 2nd Plaintiff) in favour of 2nd Defendant registered as
Doc.No.651 of 2016 at the office of 8th Defendant as null and void and
declare that the 1st Plaintiff as lawful owner at the suit schedule mentioned
Property. (c) consequently declare that the 1st plaintiff as lawful owner of



the suit schedule mentioned property; (d) to grant permanent injunction restraining the defendants, their men, agents, servants, legal heirs, representative whomsoever thereby preventing the plaintiffs from their free ingress and egress in the suit schedule mentioned property; (e) to direct the defendants to pay the cost of this suit; and (f) to grant other order or other relief.

For applicant/D4 : Mr.M.L.Ganesh
in A.No.4217 of 2021

For P1&2/1st & 2nd respondents : M/s.K.Bhuvaneswari
in A.No.4217 of 2021

For D7/7th respondent : Mr.P.Veeramalai

For D8/8th respondent : Mr.Balasubramanivelan

For D3 : AoS filed

Notice served on D5,D6 and D9

Notice unserved on D4

ORDER

Civil Suit No.258 of 2021 is filed by the plaintiffs against the defendants to declare forged POA dated 16.05.2016 created by 1st and 2nd defendants and adjudicated as Doc.No.21/2016 on 24.05.2016 as null and void; to declare the Sale Deed dated 02.06.2016 executed by the 1st Plaintiff (Rep. by her Power Agent 2nd Plaintiff) in favour of 2nd Defendant registered as Doc.No.651 of 2016 at the office of 8th Defendant



as null and void and declare that the 1st Plaintiff as lawful owner at the suit schedule mentioned Property; to grant permanent injunction restraining the defendants and to direct the defendants to pay the cost the suit.

2.The 1st defendant in C.S.No.258 of 2021 has taken out application in A.No.4127 of 2021, seeking to reject the plaint in the above suit under Order XIV Rule (8) of Madras High Court Original Side Rules read with Order VII Rule 11 (C) of the Civil Procedure Code 1908 on the ground of territorial jurisdiction as well as in terms of Section 34 of Securization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as 'SARFAESI Act') and Section 18 of Recovery of Debts and Insolvency Act.

3. The case of the applicant/1st defendant Bank is that it has advanced a loan to borrower/2nd defendant, Partner of M/s.Pallava Buildcon, who had availed Dropline Over Draft Facility aggregating to the tune of Rs.3.69 crores on 27.03.2017 for his business operation and executed the loan security documents in favour of the applicant Bank on 27.03.2017 and also entered a guarantee agreement on 27.03.2017. Further it is stated that 2nd defendant/fourth respondent as the absolute owner of the suit property had

deposited the original title deeds on 28.07.2017 with an intention to create



equitable mortgage in terms of Section 58(f) of Transfer of Property Act followed by execution of MOD on 31.07.2017, registered as document No.850/2017 before Joint-I SRO, Central Chennai relating to the suit property. As there was a default in paying the loan amount, the applicant/1st defendant Bank has filed a petition in Crl.M.P.No.2408/2020 before the Chief Metropolitan Magistrate, Egmore under Section 14 of the SARFAESI Act to enable the applicant/1st defendant to take possession of the secured assets.

4. The Chief Metropolitan Magistrate held in Crl.M.P.2408 of 2020 that the Bank has also complied with the provisions under Section 13(4) and Rule 8(i) & (2) of Security Interest (Enforcement) Rules 2002, and allowed the petition. Thereafter, the applicant Bank has caused a sale notice on 21.08.2021 to bring the suit property for e-auction on 29.09.2021. Further, since the Bank has taken SARFAESI action to take physical possession of the suit property, as well as to auction the same, the plaintiffs have filed the said suit and filed an application in O.A.No.512 of 2021 seeking to grant an order of interim injunction restraining the respondents from alienating the schedule mentioned property pending disposal of the Suit. Interim Injunction was granted and extended from time to time. Since there was no representation on the side of the respondent/plaintiff on 16.12.2021, the



interim injunction already granted and extended until further orders, was not extended further.

5. The learned counsel appearing for the applicant Bank submitted that the Suit is hit by the provisions of Section 18 of Recovery of Debts Due to Banks and Financial Institutions Act 1993 (hereinafter referred to as “RDDB and FI Act” and section 34 of SARFAESI Act. It is further submitted that as per Section 13 of the SARFAESI Act, a secured creditor has the right to enforce its security interest without the intervention of the Court or Tribunal. At the same time, the said Act takes care that in case of grievance, the borrower/guarantor will have the right of seeking redressal under Sections 17 & 18 of the SARFAESI Act. In the event of secured creditor filing an Original Application under Section 19 of RDDB & FI Act to recover the outstanding loan amount from the borrower or guarantor, the borrower or guarantor/third party can very well file an application under Section 19(8) of the Recovery Act to make counter claim against the bank.

6. In support of his contention the learned counsel for the applicant/4th defendant, has also relied on as many as 12 decisions of the Hon'ble Apex Court and the High Court Madras which are as follows:-



AIR 2010 SC 3413;

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- 2) ***V.Thulasi vs. IOB*** reported in *MANU/1939/2011*
- 3) ***SBI Vadavalli Branch vs. Minor Kritaantya*** reported in *Manu/TN/3290/2011*
- 4) ***Minor Kritaantya vs. SBI*** reported in *Manu/SCOR/27005/2012*
- 5) ***Sri Chandra and S.Chitra vs. K.Nagarajan & Ors*** reported in *Manu/TN/1517/2012*
- 6) ***Standard Chartered Bank vs. Dharmindar Bhohi & Ors.,*** reported in *Manu/SC/1004/2013*
- 7) ***R.Subramanian vs. The Hongkong and Shanghai Banking Corp., Ltd., & Ors*** reported in *Manu/SC/0959/2018*
- 8) ***Sree Anandhakumar Mills Ltd vs. IOB & Ors.,*** reported in *Manu/SC/0638/2018*
- 9) ***SBI vs. Allwyn Alloys Pvt., Ltd., & Ors.,*** reported in 2018(5) CTC 225
- 10) ***SBI vs. G.Moorthi & Anr*** in OSA 178 of 2019 dated 09.07.2020
- 11) ***SBI & Anr vs. S.Ramesh Narayanan & Anr*** in OSA 37 of 2021, dated 10.08.2021
- 12) ***Canara Bank & Anr., vs. C.Ramachandran*** in OSA 338 of 2021, dated 10.01.2022



7. Heard the learned counsel appearing for the applicant Bank.

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8. In terms of Section 34 of the SARFAESI Act, jurisdiction of the Civil Court is barred. Section 34 of the SARFAESI Act reads as follows:-

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.

9. As per Section 34 of the SARFAESI Act, jurisdiction of Civil Court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken or to be taken in pursuance of any power conferred under this Act. Therefore, any matter in respect of which an action might be taken even later on, Civil Court shall have no jurisdiction to entertain any proceedings thereof.



10. In this Application, the defendant/Bank raised preliminary objection as to the maintainability of the Suit in view of the bar under Section 34 of SARFAESI Act.

11. After having perused the materials available on record and the relevant provisions under the SARFAESI Act and RDDB and FI Act and the catena of judgments of the Hon'ble Apex Court and the Madras High Court, I am of the view that the Suit is hit by the provisions of Section 18 of RDDB and FI Act and Section 34 of SARFAESI Act and hence, the merits of the case need not be gone into. Therefore, the Application No.4217 of 2021 in C.S.No.258 of 2021 is ordered and the plaint in C.S.No.258 of 2021 stands rejected. However, the respondents/plaintiffs are at liberty to work out their remedies in the manner known to law. Consequently, connected Application in O.A.No.512 of 2021 is closed. There shall be no order as to costs.

Sd./- P.V.J.,
25.02.2022

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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