



WEB COPY



A.No.1407 of 2022 in CS.No.245 of 2021

A.No.1407 of 2022 in

CS.No.245 of 2021

P.VELMURUGAN, J.

This application has been filed to reject the plaint on the ground of territorial jurisdiction as well as in terms of section 34 of SARFAESI Act, 2002.

2. The first respondent/plaintiff has filed the suit (a) for declaration of the adjudicated General Power of Attorney dated 11.09.2016 executed by the Plaintiff in favour of the first defendant registered as Document No.29 of 2016 at SRO, Ashok Nagar as null and void; (b) for declaration of the sale deed dated 06.04.2017 executed in favour of the second defendant, registered as Doc. No.864 of 2017 at SRO, Ashok Nagar, as null and void; (c) for a permanent injunction restraining the defendants from alienating, encumbering, entering or trespassing or disturbing or whatsoever by preventing the plaintiff from her free ingress and egress in the suit schedule mentioned property; and also (d) for declaration that the plaintiff as lawful owner of the suit schedule mentioned property.

3. During the pendency of the suit, the present application has been filed by the applicant/fifth defendant which is a financial institution, to reject the plaint in CS.No.245 of 2021.



A.No.1407 of 2022 in CS.No.245 of 2021

4. Learned counsel for the applicant/fifth defendant would submit that the second defendant had obtained loan from the fifth defendant by depositing the title deed in respect of the suit schedule property. Since the third respondent/second defendant committed default in repayment of loan, the said loan account slipped into NPA. Hence, the applicant/fifth defendant exercising its power under section 13 of SARFAESI Act took possession of the suit schedule property and in constructive possession of the same and hence, plaintiff can approach only the Debt Recovery Tribunal and not a Civil Court. Hence, this Court has no jurisdiction to entertain the suit.

5. Learned counsel for the first respondent/plaintiff would submit that the second respondent who is the first defendant in the suit is the power agent of the plaintiff and he executed a sale deed in favour of the third respondent/second defendant, who in turn, deposited the such title deed for obtaining loan from the applicant/fifth defendant and hence, the plaintiff has filed the suit for declaration that the General Power of Attorney executed in favour of the second respondent/first defendant and sale deed executed by the second respondent/first defendant in favour of the third respondent/second defendant are null and void.



A.No.1407 of 2022 in CS.No.245 of 2021

WEB COPY

6. Heard and perused the records. Admittedly, the second defendant has borrowed money from the applicant/fifth defendant by depositing the title deeds for the said loan. Since the applicant / fifth defendant has taken possession of the property and also in constructive possession of the same, the only remedy available to the first respondent/plaintiff is to approach the Debt Recovery Tribunal, but not a Civil Court which is barred under section 34 of SARFAESI Act, 2002. Therefore, the suit is barred by law and the same is liable to be rejected.

7. In view of the above, the application filed under Order VII Rule 11 of CPC to reject the plaint is ordered and the plaint is rejected. However, the first respondent/plaintiff shall workout her remedy before the Debt Recovery Tribunal in the manner known to law.

30.03.2022

nl

P.VELMURUGAN, J.



WEB COPY



A.No.1407 of 2022 in CS.No.245 of 2021

nl

A.No.1407 of 2022 in CS.No.245 of 2021

30.03.2022