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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM

THE HON'BLE MR.JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

O.S.A.NO.338 OF 2021
AND
C.M.P.NO.21541 OF 2021

1. The Canara Bank
Rep. by its Chief Manager,
ARM Branch, 2nd Floor,
Circle Office Building,
No.563/1, Anna Salai,
Teynampet, Chennai - 600 018.

2. The Authorized Officer,
The Canara Bank,
2nd Floor, Circle Office Building,
No.563/1, Anna Salai,
Chennai - 600 018.

... Appellants/Defendants
4 & 5

.Vs.

1. C.Ramachandran

2. C.Radhakrishnan

... 1st & 2nd Respondents/
Plaintiffs

3. A.Chakrapani

4. C.Shanker

5. C.Hemalatha

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

PRAYER:-

Appeal preferred under Order XXXVI Rule 1 of O.S. Rules r/w
Clause 15 of Letters Patent against the order and decretal
order dated 21.10.2021 made in O.A.No.1299 of 2021 in C.S.No.383
of 2020.



PRAYER in C.S.NO.383 OF 2020:-

(a) Declaration of the Plaintiffs 2/5 (Two-Fifth) share in the Suit property and partition and separate possession of their share thereto;

(b) Declaration that any guarantee given by the 1st Defendant with respect to the Suit property is sham, null and void and not binding on the Plaintiffs;

(c) Injunction restraining the defendants 1 to 3 from interfering with the plaintiffs peaceful possession and enjoyment of the suit property in any manner;

(d) Injunction restraining the fourth and fifth defendants from alienating or otherwise creating encumbrances of any nature in the suit property;

(e) Mandatory Injunction directing the 4th and 5th defendants to hand over the original title and other documents pertaining to the suit property, morefully set out in the Memorandum of Deposit of title deeds, dated 06.05.2013 and registered as Document No.503 of 2013 before the Sub-Registrar, Chennai Central Joint-I to the plaintiffs (morefully described in the Schedule-B hereto)

PRAYER IN O.A.NO.1299 OF 2021:-

Application 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.

For Appellant : Mr.M.L.Ganesh

For Respondents : Mr.T.Gowthaman
For R1 and R2

Mr.A.L.Somayaji
Senior Counsel for R3

JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 21 October 2021 recorded on A.No.1299 of 2019 in C.S.No.383 of 2020. The said application was for rejection of the plaint



invoking Order VII Rule 11 C.P.C. for rejection of plaint qua two of the defendants i.e., original defendants 4 and 5. The said application is rejected. It is this order which is under challenge in this appeal.

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2. Learned advocate for the appellants/original defendants 4 and 5, which is a Nationalised Bank has vehemently submitted that the suit in question, according to the appellants, was a collusive suit and the two sons had ostensibly prayed for partition of the property which was mortgaged by the first defendant - father along with defendants 2 and 3, who are siblings of the plaintiffs, in favour of the bank/ defendants 4 and 5, inter-alia praying injunction against the Bank to deal with the property in any manner. It is submitted that the suit had preceded, so many other proceedings and much after the publication of auction, this suit came to be filed with a view to stall the recovery by the nationalised bank. It is also submitted that the suit was barred by law and therefore the application filed under Order VII Rule 11 C.P.C. ought to have been allowed. It is noted that the learned advocate for the appellants has taken this Court extensively through paper books and so also the decisions in (i) State Bank of India, Vadavalli Branch Vs. Minor Krithaanya rep. by her mother/guardian G.Rekha (C.M.A.No.3005 of 2010 dated 16.08.2011), (ii) Minor Krithaanyaa Tr. Mother/Guardian Vs. M/s.State Bank of India, now SBI (S.L.P. (CC) No.1383/201 dated 30.01.2012), (iii) Sri Chandra and S.Chitra Vs. K.Nagarajan and Others (A.S.No.277 of 2008 dated 12.03.2012), (iv) R.Subramanian Vs. The Hongkong and Shanghai Banking Corporation Ltd., and Others (O.S.A. No.40 of 2018 dated 15.02.2018) and (v) State Bank of India Vs. G.Moorthi and another (O.S.A.No.178 of 2019 dated 09.07.2020). It is submitted that this appeal be allowed and application under Order VII Rule 11 C.P.C. be allowed by setting aside the order of learned single Judge.

3. On the other hand, Mr.T.Gowthaman, learned advocate for the first and second respondent/original plaintiffs has opposed this appeal. It is submitted that the plaintiffs were well within rights to ask for their right in the property in question on the basis of the registered document, from their father and other siblings, who are joined as defendants 1, 2 and 3. It is submitted that since the plaintiffs do have share to the extent of 1/5th each, it could not have been dealt with by the bank, even on the basis of the mortgage deed signed by the father, brother and sister. Attention of this Court is invited to the various proceedings, including before the Debts Recovery Tribunal to point out, that the only remedy available to the plaintiffs is to file civil suit which they had resorted to. It is submitted that injunction granted by the learned single Judge in the suit is also operating and therefore no interference be



made in the order rejecting application under Order VII Rule 11 C.P.C.

4. It is noted that, pursuant to the order of this Court dated 06.01.2022, on behalf of the original first defendant - father, Mr.A.L.Somayaji, learned senior advocate has appeared before this Court. He also addressed the Court to the extent that it is necessary. We have heard him. Certain factual aspects are also pointed out by him which we have taken note of.

5. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:

5.1 Parties to the suit, as is evident from the cause title of the suit, are as under:

1. Mr.C.Ramachandran,
S/o.Mr.Chakrapani,
4th Floor, 216/65,
Alwarpet Street, Alwarpet,
Chennai - 600 018.
2. M.C.Radhakrishnan,
S/o.Mr.Chakrapani,
4th Floor, 216/65,
Alwarpet Street, Alwarpet,
Chennai - 600 018.

.. Plaintiffs

Vs.

1. Mr.A.Chakrapani,
S/o.S.Adhimoola Mudaliar,
216/65, Alwarpet Street,
Alwarpet, Chennai - 600 018.
2. Mr.C.Shankar,
S/o.A.Chakrapani,
216/65, Alwarpet Street,
Alwarpet, Chennai - 600 018.
3. Mrs.C.Hemalatha,
D/o.A.Chakrapani,
216/65, Alwarpet Street,
Alwarpet, Chennai - 600 018.
4. M/s.Canara Bank rep. by its
Manager,
ARM Nagar Branch,
Chennai - 600 018.



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5. The Authorized Officer,
M/s.Canara Bank,
IFSC Code: CNRB0000416,
2nd Floor, Circle Office Building,
563/1, Anna Salai,
Chennai - 600 018. .. Defendants

5.2 The relief sought in the suit is as under:

(a) Declaration of the plaintiffs' 2/5 (two-fifth) share in the suit property and partition and separate possession of their share thereto;

(b) Declaration that any guarantee given by the 1st defendant with respect to the suit property is sham, null and void and not binding on the plaintiffs;

(c) Injunction restraining the defendants 1 to 3 from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property in any manner;

(d) Injunction restraining the 4th and 5th defendants from alienating or otherwise creating encumbrances of any nature in the suit property;

(e) Mandatory injunction directing the 4th and 5th defendants to hand over the original title and other documents pertaining to the suit property morefully set out in the memorandum of deposit of title deeds dated 06.05.2013 and registered as Document No.503 of 2013 before the Sub Registrar, Chennai Central Joint I to the plaintiffs (morefully described in the Schedule B hereto);

(f) the costs and/or

(g) pass such further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

5.3 The property which is the subject matter of the suit is the same, for the other proceedings including (i) Notices issued by the Bank to the borrower and guarantor dated 25.06.2018 and 26.06.2018 respectively, (ii) Possession Notice issued by the Bank dated 31.10.2018 and the (iii) Order in S.A.No.182 of 2020 dated 30.04.2021 passed by the Debts Recovery Tribunal, Chennai.



5.4 The effect of relief sought, including the declaration is that, under the guise of partition, in substance, the action of mortgaging the property is sought to be declared as nullity by two brothers, joining the father and two siblings as party defendants. If the dates of the documents are kept in view, the loan/facility was availed by the company of the second defendant, not only since years but more than two decades, and the outstanding amount is sought to be recovered by the bank, at that stage, this suit is instituted.

5.5 We find that the grievance of the plaintiffs (sons) against the father, if any, may have its own consequence. They can always take recourse to the remedy available under the law, however the same cannot be permitted to be brought right upto the bank, which is struggling to recover its dues from the borrower, who are close family members.

5.6 We find that entertaining such a suit against the bank would only encourage ingenuity of the parties. The suit is even otherwise barred by statutory provisions of the SARFAESI Act and Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Without expressing any opinion with regard to genuinity or otherwise qua the suit in question between the plaintiffs and defendants 1, 2 and 3, suffice it to note that the bank can not be asked to face this litigation. The application filed by the bank under Order VII Rule 11 C.P.C ought to have been allowed.

5.7 We have taken note of the decision of the Division Bench of this Court in R.Subramanian Vs. The Hongkong and Shanghai Banking Corporation Ltd., and Others (cited supra). There is no reason for us to take a different view. In absence of any disagreement on our part, we are bound by it and we are in agreement with the same.

6. For the above reasons, we set aside the impugned order dated 21.10.2021 and allow the application filed by the appellant Bank under Order VII Rule 11 C.P.C. Since the application filed by the bank under Order VII Rule 11 C.P.C. is allowed, interim injunction against it would not survive. This appeal is allowed. No costs. Consequently, connected C.M.P. is disposed of.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

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+1cc to Mr.T.Gowthaman, Advocate, S.R.No.2491

O.S.A.NO.338 OF 2021

VSNII (CO)
PBS/09/02/2022