



A.S.No.235 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATE: 18.10.2022

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

A.S.No.235 of 2017

1. Sathya Balachander
2. Swapna Adithya
3. Swetha Hariharan

... Appellants

Vs.

- 1.Canara Bank
Rep. By its Branch Manager
SAF Branch
No.121, May Flower Complex
11th Street, Tatabad
Coimbatore

- 2.P.V.Raghupathy

...Respondents

Prayer:- First Appeal has been filed under Section 96 r/w. Order 41 Rule I of Civil Procedure Code against the Judgment and Decree dated 05.12.2015 made



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in I.A.No.1118 of 2011 in O.S.No.175 of 2009 on the file of the II Additional

WEB COURT District and Sessions Judge, Tiruppur.

For Appellants : Mr.S.Mukunth
For R1 : Mr.P.Raghunathan
for Mr.T.S.Gopalan
For R2 : No Appearance

J U D G M E N T

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

The Appeal is directed against the order dated 05.12.2015 passed in I.A.No.1118 of 2011 in O.S.No.175 of 2009 filed by the first Respondent under Order 7 Rule 11 of Civil Procedure Code for rejection of plaint.

2.The facts leading to the filing of the above Appeal are as follows:-

(a) The Appellants filed a suit for partition against the second Respondent herein claiming 3/4th share in the suit schedule property. The first Respondent was also shown as Defendant in the said suit.

(b) Their case in the suit was that the second Respondent had obtained credit facility from the first Respondent. He had no right to mortgage the suit



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schedule property as it was an ancestral property. He had right to mortgage only his 1/4th share in the property and the mortgage in respect of whole of the property is not binding on the Appellants.

(c) In the said suit, the first Respondent herein filed an application in I.A.No.1118 of 2011 under Order 7 Rule 11 and Section 151 C.P.C praying for rejection of plaint. The first Respondent contended in the said I.A., that the suit was not maintainable since Section 34 of SARFAESI Act bars the jurisdiction of Civil Court. The first respondent further stated that if the Appellants were aggrieved over the initiation of the SARFAESI proceedings taken by the first Respondent, it was open to them to approach the Debts Recovery Tribunal by filing an Appeal/Application under Section 17 of the said Act. The suit filed by the Appellants by suppressing all the above legal aspects is liable to be dismissed and hence prayed for rejection of plaint.

(d) The first Appellant filed a counter to the said petition stating that the suit is maintainable and Section 34 of the SARFAESI Act does not bar the suit of the nature filed by the Appellants. The suit for partition can only be decided by the Civil Court and the Debts Recovery Tribunal has no jurisdiction to decide the suit for partition. The second Respondent herein had unlawfully mortgaged the entire property in favour of the first Respondent and the same is not binding



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on the Appellants. He has no right over the entire extent of land and the

Appellants are entitled to 3/4th share in the land.

(e) The trial Court found that the Appellants if aggrieved by the action of the second Respondent in mortgaging the entire land in favour of the first respondent and are aggrieved by the action of the first respondent in initiating proceedings under SARFAESI Act have a remedy to file an Application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal. The trial Judge further held that Section 34 of the SARFAESI Act prohibits Civil Courts from entertaining any suit or proceedings in respect of any matter which are Debts Recovery Tribunal is empowered to determine under the SARFAESI Act. The learned Judge therefore found that since the Appellants had a remedy to file an Application under Section 17 of the SARFAESI Act, the suit was not maintainable and hence allowed the application for rejection of plaint.

3.Heard Mr.S.Mukunth, learned counsel for the Appellants and Mr.P.Raghunathan, learned counsel for the first Respondent.

4.The learned counsel for the Appellants submitted that the SARFAESI Act did not provide for determining the issues such as whether the properties are



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ancestral in nature and as to whether the Appellants are entitled to partition of the suit schedule property. Section 34 of the SARFAESI Act does not bar the suit for partition in a Civil Court. The Debts Recovery Tribunal has no right to decide the nature and character of the property and it is only for the Civil Court to adjudicate such an issue. The learned counsel further submitted that the mortgage created by the second Respondent in favour of the first Respondent is not binding on the Appellants and they cannot be asked to approach the Debts Recovery Tribunal to determine their rights.

5.The learned counsel for the first Respondent submitted that the Hon'ble Apex Court has held in a catena of decisions that the Civil Court shall not entertain any issue that can be determined by the Debts Recovery Tribunal under the SARFAESI Act. The Appellants if aggrieved by the mortgage of their property by the second respondent in favour of the first Respondent have a remedy under the SARFAESI Act by filing an Application under Section 17. The Debts Recovery Tribunal is empowered to determine all issues including the issues raised by the Appellants in the suit.

6.We have considered the contentions raised by the learned counsels on



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either side and the documents and pleadings on record. Section 34 of the

WEB SARFAESI Act which bars the jurisdiction of the Civil Court reads as follows:-

“34.No civil court shall have jurisdiction to entertain any suit or proceedings 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).”

7.The question therefore is whether the Debts Recovery Tribunal is empowered to determine the issues raised by the Appellants in the suit. If the Debts Recovery Tribunal is empowered under Section 17 of the SARFAESI Act to determine the issues then the suit is barred. The second Respondent had mortgaged the suit schedule property in favour of the first Respondent. The first Respondent had initiated proceedings under the SARFAESI Act against the second Respondent. The Appellants are claiming 3/4th share in the said property stating that the properties are ancestral and they are entitled to 3/4th share in the property and prayed for partition of the suit schedule property.



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8.It is well settled that the SARFAESI Act is a self contained code. Any person who is aggrieved by the action taken by the creditor under the SARFAESI Act can only approach the Debts Recovery Tribunal under Section 17. The Debts Recovery Tribunal is empowered to decide all such issues.

9.The Hon'ble Supreme Court in ***Jagdish Singh vs. Heeralal and others*** reported in **(2014) 1 SCC 479** held that in a case where a suit was filed by certain persons claiming right over the property mortgaged by another person, in favour of the Bank, the Hon'ble Apex Court has held as follows:

“25. We are of the view that the civil court jurisdiction is completely barred, so far as the “measures” taken by a secured creditor under sub-section (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal, to determine as to whether there has been any illegality in the “measures” taken. The Bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondents 6 to 8 (sic Respondents 1 to 5) have been crystallised, before creating security interest in respect of the secured assets.

26. In such circumstances, we are of the view that the High



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Court was in error in holding that only civil court has the jurisdiction to examine as to whether the “measures” taken by the secured creditor under sub-section (4) of Section 13 of the Securitisation Act were legal or not. In such circumstances, the appeal is allowed and the judgment of the High Court is set aside. There shall be no order as to costs.”

10.The Hon'ble Supreme Court in the very same judgment held that any person in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person held as follows:

“19. The expression “any person” used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the Securitisation Act. Reference may be made to the judgment of this Court in Satyawati Tondon case.”

11.The Hon'ble Supreme Court in ***Authorised Officer, State Bank of India vs. Allwyn Alloys Private and others*** reported in ***(2018) 8 SCC 120*** held as follows:

“8. After having considered the rival submissions of the parties, we have no hesitation in acceding to the argument urged on behalf of the Bank that the mandate of Section 13 and, in particular, Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,



2002 (for short “the 2002 Act”), clearly bars filing of a civil suit.

For, no civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under this Act to determine and no injunction can be granted by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.”

12.This Court after considering the Judgments of the Hon'ble Apex Court in ***G.Senthil vs. Authorized Officer/Chief Manager*** reported in **2019 SCC Online Mad 15396** held as follows:

“10. Therefore, in view of the overriding effect of the provisions of the SARFAESI Act and a clear bar under Section 34 of the said Act, the Civil Suits filed by the present respondent Nos. 5 and 6 are not maintainable, but it seems that the learned trial Court has continued with the trial of the said suits although illegally. The trial Courts must, therefore, take suitable steps for rejection or return of such complaints immediately in view of the bar of law under Section 34 of SARFAESI Act and the overriding effect of the provisions of the SARFAESI Act provided under Section 35 of the said Act. The remedial measures provided to such persons is only before the Debts Recovery Tribunal or the Debt Recovery Appellate Tribunal. After such orders are passed by the concerned Tribunal, including the Appellate Tribunal, only the concerned aggrieved



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party can avail constitutional remedies under the Constitution of India. Filing and maintaining of such suits in Civil Courts are, therefore, in clear abuse of process of law and we strongly deprecate the same.”

13.From the Judgments of the Hon'ble Supreme Court and this Court, it is clear that the Debts Recovery Tribunal is empowered to determine the issues raised by the Appellants and hence, the suit is barred in view of Section 34 of the SARFAESI Act.

14.We are therefore of the view that the order passed by the trial Court rejecting the plaint filed by the Appellants is in accordance with law and does not call for any interference. Hence, the Appeal is dismissed. No costs.

(V.M.V., J) (S.M.,J)

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Index : Yes / No

Internet : Yes / No

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To



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The II Additional District and Sessions Judge.
Tiruppur.

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AND
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