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C.R.P. No.1056 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 1056 of 2017

and

C.M.P. No. 5098 of 2017

Mrs.Majal Rajan,
W/o. A.Kannan,
rep. by her power agent
Mr.Anthony Rajan

... Petitioner

Versus

1. J.Chandrakala,
W/o. N.Jayagopal

2. C.S.Prathiba,
W/o. V.Gandhi

.. Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the order and decretal order of the learned District Munsif, Tambaram dated 18.01.2017 passed in I.A.No.816 of 2016 in O.S.No.147 of 2016.



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For Petitioner : Mr.P.Sesubalan Raja

For Respondents : Mr.A.Bharathi for R1 & R2

ORDER

The Revision Petitioner herein is the defendant in the suit in O.S.No.147 of 2016 on the file of learned District Munsif, Tambaram and she had filed an application in I.A.No.816 of 2016 before the trial court to reject the plaint under Order 7 Rule 11 of C.P.C. stating that the jurisdiction of civil court is barred under Sec.34 of SARFAESI Act. But, the trial judge without appreciating the said proposition of law erroneously allowed the application. Challenging the said findings, the present Civil Revision Petition has been filed.

2. The learned counsel for Respondents raised objection stating that the suit property with an extent of 1151 sq.ft. comprised in Old Survey No.95/2 (Part), Ward No.G, Block No.18, R.P.T.No.6050/08 was originally enjoyed by one Loganathan, son of Ethiraj, who got assignment patta in the year of 1987. He executed a power of attorney in favour of one O.Laburam in the year of 2007 and from that Power of Attorney, one Garibai purchased



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the property in the year of 2008 and from him, both the plaintiffs purchased undivided half share by way of two sale deeds dated 13.06.2008 respectively, thereby they are the owners of the property. When the defendant attempted to encroach the suit property, they have filed a suit seeking the relief of permanent injunction. The trial court has rightly considered the title over the property and rightly dismissed the application filed by the defendant.

3. On considering both side submissions and on perusal of records, it reveals that the suit in O.S.No.147 of 2016 filed by the respondents herein as plaintiffs before the District Munsif Court, Tambaram praying for a permanent injunction in respect of the suit property with an extent of 1151 sq.ft. comprised in Old Survey No.95/2 (Part), Town Survey No.59 at Tambaram Town claiming that they are the absolute owners of the property as per sale deeds dated 13.06.2008. As the defendant caused interference, they have filed a suit for permanent injunction. But, immediately after receipt of notice, the defendant filed an application in I.A.No. 816 of 2016 under Order VII Rule 11 of C.P.C. to reject the plaint stating that the suit



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property is not belong to the alleged vendor of plaintiffs viz., Loganathan

and in fact, entire property along with house site with an extent of 2800

sq.ft. comprised in Survey No.95/2 (Part) in Selaiyur Village, Tambaram

Taluk, was assigned in favour of one Ethiraj by considering his continuous

possession. After his death in the year of 1997, his legal heirs including

alleged vendor Loganathan appointed one A.R.Manivannan as their power

agent through the power of attorney, in the year of 2002 and the said power

agent sold the property in favour of one K.Rajeshwari in the year of 2005.

Thereafter, she availed a housing loan for a sum of Rs.20,00,000/- by

creating equitable mortgage by depositing the title deeds in the year of

2003. Subsequently, she committed default in payment of a bank loan.

Hence, her account was classified as non-performing asset and a statutory

notice under Sec.13 (2) of SARFAESI Act was issued on 21.05.2011

demanding to repay the amount due of Rs.31,31,097/-, but she failed to

comply with the demand, thereby, a possession notice under Sec.13(4) of

SARFAESI Act was issued on 14.09.2011. Even thereafter, the borrower

had not chosen to pay the amount due to the bank. Hence, they have

approached the Chief Judicial Magistrate, Chenglepet seeking its assistance



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to take possession of property in C.M.P.No. 431 of 2012 under Sec.14 of SARFAESI Act. On hearing their submissions, the petition was allowed on 21.03.2012 and an Advocate Commissioner was appointed to take possession of the property and to hand over the same to the bank. Thereafter, an auction was conducted, in which the petitioner was declared as highest bidder and she paid entire amount and got the sale certificate on 22.08.2012. Subsequently, the possession was handed over to her and from that date onwards, she enjoyed the property as absolute property and she obtained a building plan to put up a construction. Further, she submits that the western portion of suit property was allotted to one Ethiraj is totally false. Submitting all the facts, he content that the Civil Court has no jurisdiction to interfere with SARFAESI proceedings, thereby the suit, as such is barred by jurisdiction under Sec.34 of the Act.

4. On considering both side submissions, the trial judge held that both parties have purchased the property from the same vendor, however, it is a suit for permanent injunction, so the title of the property cannot be decided. But, the possession of the property is to be decided in the injunction suit,



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which can be decided only after adducing evidence. As it is a mixed question of law and facts, the trial judge dismissed the application. Challenging the said findings, the defendant filed the present Civil Revision Petition.

5. The learned counsel for Revision Petitioner would submit that the trial judge failed to take note of the fact that jurisdiction of civil court is totally barred under Sec.34 of SARFAESI Act. If at all, the plaintiffs are having any grievance, they have to approach the Debt Recovery Tribunal invoking Sec.37 of SARFAESI Act if really, they are aggrieved by the measures taken under Sec.13(2) and (4) of SARFAESI Act.

6. On perusal of records, the fact remains that the Revision Petitioner herein is the auction purchaser of the property initiated proceedings under the SARFAESI Act. To prove the said SARFAESI proceedings, he produced the documents Ex.P1 to P13, which would clearly reveals that by invoking Sec.13(2) and (4) of SARFAESI Act, the property of one Rajeshwari was brought into auction, as she failed to discharge the loan and



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the suit property originally belongs to one Ethiraj by way of assignment. As on date, the Revision Petitioner is the purchaser of the property as per the proceedings initiated under Sec.14 of SARFAESI Act. Admittedly, the suit property described in O.S.No.147 of 2016 filed by the respondents herein comprised in Town Survey No. 59, Old Survey No. 95/2 (Part), an extent of 1151 sq.ft. at Selaiyur Village, Tambaram is forming part of the property in the sale certificate issued in favour of Revision Petitioner, who is an auction purchaser in the year of 1992 with total extent of 2800 sq.ft. by the office of Syndicate Bank under the SARFAESI Act. So, in the year of 2012 itself, in respect of the suit property along with larger extent, a sale certificate stands in the name of auction purchaser/Revision Petitioner herein. Therefore, if at all, the plaintiffs are having any grievance over the property, they ought to have approached the Debt Recovery Tribunal by invoking appropriate provision of law. Hence, the relief claimed in the suit as such is totally barred by jurisdiction under Sec.34 of the Act. But, the trial judge without appreciating the said proposition of law entertained the suit as such is unfair and it is liable to be set aside.



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WEB COPY 7. Accordingly, this Civil Revision Petition is allowed and the findings of the trial judge in I.A.No. 816 of 2016 is set aside and the plaint is ordered to be rejected. However, liberty is granted to the respondents to approach Debt Recovery Tribunal for appropriate relief as per manner known to law under the provisions of SARFAESI Act, 2002. No costs. Consequently, connected C.M.P. is closed.

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Index: Yes/No
Internet: Yes/No
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To

District Munsif,
Tambaram.



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