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S.A. No.99



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

S.A. No. 993 of 2022

and C.M.P. No.21381 of 2022

1. M/s. Innovative Health Care (India) Pvt., Ltd.,
Reptd. by its Director S. Jayabalan,
No.88/2, AB Block, 1st Street,
Anna Nagar, Chennai - 40.
2. M/s. Saranya Proteins Private Ltd.,
Reptd. by its Director, S. Seshan,
F-105, 3rd Street, Anna Nagar East,
Chennai - 600102.
3. M/s. Biotan Laboratories (India) Pvt. Ltd.,
Reptd. by its Director K.M. Sakthivel,
F-105, 3rd Street, Anna Nagar East,
Chennai - 600102. ... Plaintiffs/ Appellants/ Appellants

Vs.

1. M/s. Protchem Industries (India) Ltd.,
Reptd. by its Managing Director T.K. Mohan,
Door No.4, 1st Floor, F-105, 3rd Street,
Anna Nagar East, Chennai - 600102.
2. The Senior Manager,
EXIM Bank of India,
having its Office at Uthamar Gandhi Street,
Chennai -1.
3. Sahool Hammeed



4. Suresh

... Defendants/ Respondents/
Respondents 1 to 4

5. C. Vijayakumar

... 5th Respondent

Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree of the learned Subordinate Judge, Maduranthakam dated 26.11.2018 made in A.S. No.26 of 2011 confirming the Judgment and Decree of the learned District Munsif, Maduranthakam dated 28.03.2011 passed in O.S. No.174 of 2008.

For Appellants : Mr. C. Ramesh

For Respondents : No Appearance (Admission Stage)

JUDGMENT

This second appeal has been filed challenging the concurrent finding of the Courts below dismissing the suit filed or the relief, injunction against the defendants, from any way interfering with the plaintiff's right to use the road in the suit property to access their lands and factories.

2. The case of the plaintiffs is that they are private companies, having factories situated in S.Nos.45/2, 45/1 and 44/3, respectively. These three properties are not having direct access to the GST road. For the purpose of



obtaining an approach road to their factories, they have jointly purchased 28 cents of land in S.No.39/1A, as per sale deed dated 25.02.2005 and they formed a common road from G.S.T road to their factories. Subsequently, they have also entered into an agreement with the first defendant on 13.02.2006, who was having 30 cents of land in the Survey Nos.39/1A, 39/1B and 39/1C, situated on the south of the above common pathway formed by the plaintiffs, so as to have easy access for the heavy vehicles such as container lorries and other heavy vehicles from the GST road to their factories. As per the agreement, all the plaintiffs as well as the first defendant are entitled to use the land in S.Nos.39/1A, 39/1B and 39/1C to the total extent of 58 cents and subsequently, the plaintiffs and the first defendant have formed a metal road in the said land for easy access to G.S.T road from their factories. Due to the default in loan by the first defendant, the second defendant Bank has initiated the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, hereafter). Based on the SARFAESI proceedings, the first defendant's lands including the land in S.No.39/1B and 39/1C were brought to public auction and it was sold to third parties. At the time of filing the suit, the plaintiffs came to know that the third and fourth defendants were the successful bidders in the auction and purchased the said property. The third and fourth defendants, after taking possession of the



property of the second defendant, they started preventing the plaintiffs from using the portion of the lands used as road, falls within the S.Nos.39/1B and 39/1C. As per the agreement dated 13.02.2006, entered between the plaintiffs and the first defendant, plaintiffs are entitled to use the first defendant's lands in S.Nos.39/1B and 39/1C, similarly, the first defendant is also entitled to use the same. But, without considering the agreement, the purchasers of the first defendant's property are preventing the plaintiffs from using the suit property, hence they have come forward with the suit for injunction.

3. The second defendant Bank resisted the suit by filing the written statement by stating that, the first defendant failed to clear the debt obtained from the second defendant and the same became Non-performing asset, they had initiated SARFAESI proceedings against the first defendant for enforcement of secured assets. Subsequently, the second defendant had sold the mortgaged properties of the first defendant in favour of one C. Sugumar and not in favour of the third and fourth defendants herein and further stated that the second defendant had no knowledge about the alleged agreement between the plaintiffs and the first defendant. Being the secured creditors, the second defendant had exercised their right of sale of the secured assets under the SARFAESI Act, 2002, hence no injunction suit is maintainable against them. The other



defendants have not contended the suit and remained exparte.

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4. The Trial Court after considering the pleadings of both sides framed following issues.

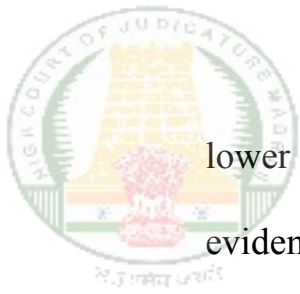
1. *Whether the plaintiffs have right and possession over the plaint schedule property?*
2. *Are the plaintiffs entitled for the relief of permanent injunction?*
3. *What are all the other reliefs and cost plaintiff is entitled for?*

Additional issues:

1. *Is the suit bad for non-joinder of necessary parties?*
2. *Whether the agreement dated 13.02.2006 would convey right of access to the plaintiffs over the plaint schedule property?*
3. *Whether this Court has jurisdiction to try the present suit?*

5. The Trial Court after considering the submissions and evidence placed on record, dismissed the suit on the ground that the person, who is having interest in the suit property has not been made as a party, since the SARFAESI proceedings has been initiated, no injunction would be granted against any of the defendants.

6. Aggrieved over the same, the plaintiffs have approached the lower Appellate Court challenging the judgment and decree of the Trial Court. The



lower Appellate Court after considering the representations of the parties and evidence placed on record, dismissed the suit, after accepting the findings of the Trial Court. Aggrieved over the dismissal of the suit by the Courts below, the plaintiffs have come forward with this second appeal.

7. Today, when the matter is listed before this Court for admission of this appeal, the learned counsel for the appellants submits that they came to know that the real owner of the suit property is one C. Sugumar and in whose favour the sale certificate was also issued. He further submitted that there is an agreement entered between the first defendant and the plaintiffs, as per the agreement, the plaintiffs are entitled to use the portion of the land of the first defendant for accessing to the GST road from their factories, similarly, the first defendant also entitled to use the same. That being so, without respecting this agreement, the purchaser of the first defendant's property is now objecting the plaintiffs enjoyment over the said land, hence they have come forward with the suit for injunction against the defendants. He further submitted that Courts below have dismissed the suit on the ground that the present purchaser of the first defendant's property has not been impleaded and the agreement does not containing any time limit. The Courts below have also failed to appreciate the fact that the second defendant Bank is also a party, who initiated SARFAESI



proceedings and sold the suit property, which belongs to the first defendant in the public auction and there must be some protection to be granted in favour of the plaintiffs.

8. I have considered the submissions made by the appellants and on careful perusal of the Ex.A.2 - agreement dated 13.02.2006 entered between the plaintiffs and the first defendant, which shows that the plaintiffs and the first defendant running factories in the same area and they have decided to form a separate road in the land in S.Nos.39/1B and 39/1C belongs to the first defendant, so that to have easy access to the GST road and for the benefit of their factories. Though, it is acceptable that the agreement dated 13.02.2006 entered between the plaintiffs and the first defendant, is also binding on the person, who had purchased the property of the first defendant, the plaintiff have wrongly sought relief against the defendant No.3 and 4, who are not the purchasers.

9. On 07.01.2010, as per Ex.B.6 - Sale Certificate, the property of the first defendant was transferred in favour of one C. Sugumar. At the time of filing of the suit, the SARFAESI proceedings were not concluded and the suit was filed stating that the defendants 3 and 4 were the successful bidders and interest to the property was transferred in their favour. However, the Bank has



informed the Court that they are not successful bidders. The main issue in this suit is, whether the subsequent purchaser of the first defendant's property had raised any objection for using the land or not, and whether there is cause of action for seeking injunction against the subsequent purchasers. Since, suit is filed for injunction, for better appreciation and to bring quietus to the issue, impleading the actual purchaser, who has purchased the first defendant's property in the public auction is necessary, and without his presence, the suit of this nature could not be decided.

10. On perusal of judgement and decree of both Courts shows that, the plaintiff's right to access the suit property belongs to the first defendant has not been properly considered by both Courts below and they have considered only on the maintainability of the suit for injunction in view of the bar contained under Sections 17 and 34 of the SARFAESI Act, and held the suit is not maintainable.

11. Considering the issues involved in this suit, I am of the view that plaintiffs shall file fresh suit by impleading the original owner, who is in possession of the first defendant's property. It is also open to the plaintiffs to



establish their case, based on Ex.A.2 - agreement dated 13.02.2006 entered between the plaintiffs and the first defendant and to claim appropriate relief. In the result, this second appeal is dismissed, with liberty granted to the plaintiffs to file fresh suit on the same cause of action, after impleading the purchaser of the first defendant's property.

12. Accordingly, this second appeal is dismissed. Consequently, connected civil miscellaneous petition stands closed. No cost.

21.10.2024

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Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:

1. The Section Officer,
VR Section,
High Court, Madras.

K. RAJASEKAR, J.

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