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W.P.No.18178 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.18178 of 2024

and

W.M.P.Nos.19961 & 19965 of 2024

S.M.Sudharsankrisna

... Petitioner

Vs.

1.M/s.Tata Capital Housing Finance Limited,
Through its Authorised Officer P.Ramalingam,
Centennial Square 1st Floor,
6A, Dr.Ambedkar Salai,
Kodambakkam, Chennai – 600 024.

2.J.Mathivanan

2.M.Joeruffina

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records in the order dated 20.06.2024 in CrI.M.P.No.786 of 2023 passed by the learned Chief Judicial Magistrate, Salem, and to quash the same.



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For Petitioner : Mr.M.Radhakrishnan

For R1 : Mr.M.Arunachalam

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This writ petition is filed to quash the proceedings of the learned Chief Judicial Magistrate, dated 20.06.2022, in CrI.M.P.No.786 of 2023.

2.Brief facts that are necessary for the disposal of this writ petition are as follows :

The petitioner states that he is in possession of his residential house. It is his case that in favour of second respondent he sold a plot having an extent of 2025 sq.ft. in S.No.18/1 in Kannangurichi Village, Salem Taluk and District, which was earlier purchased by him by a document dated 13.05.2013. It is stated that he constructed a house therein and started living with this family since 2014. It is his further case that he approached the 2nd respondent for financial assistance and the 2nd respondent was ready to advance the loan but insisted that the petitioner should sell his land excluding the residential building to him, on the understanding that the 2nd



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respondent will resell the same whenever the loan is repaid with interest. It is in the said circumstances, it is contended by the petitioner that he has sold only the land excluding the building to the 2nd respondent for a consideration of Rs.10,93,500/-.

3.The grievance of the petitioner is that the 2nd respondent, who purchased only the land from the petitioner, has mortgaged the property along with the building for a sum of Rs.79 Lakhs, in favour of the 1st respondent. The 1st respondent mortgagee, after declaring the account as NPA, initiated proceedings against the 2nd respondent for recovery of the sum due under Section 13 of SARFAESI Act. Pursuant to the mortgage, the 1st respondent took symbolic possession. Even before sale of the property, the 1st respondent approached the learned Chief Judicial Magistrate, Salem, by an application under Section 14 of the SARFAESI Act in Crl.M.P.No.786 of 2023. The petitioner appears to have filed an intervening petition in Crl.M.P.No.1 of 2023 and the same was rejected by the learned Chief Judicial Magistrate.



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4. During the pendency of the Criminal Miscellaneous Petition, the petitioner appears to have filed a suit in O.S.No.410 of 2024 on the file of the Principal District Court, Salem, for a declaration that the Mortgage Deed executed by the 2nd respondent in favour of 1st respondent is null and void and for a permanent injunction restraining the 1st respondent from interfering with the petitioner's physical possession of his building.

5. Meanwhile, the learned Chief Judicial Magistrate allowed CrI.M.P.No.786 of 2023. Aggrieved by the same, the petitioner has preferred the above writ petition mainly on the ground that the petitioner, who stood neither as guarantor nor borrower, is not bound by the agreement or mortgage.

6. Learned counsel for the petitioner pointed out from the sale deed that, what was sold in favour of the 2nd respondent is only the land and therefore, the mortgage, which includes the building, is fraudulent. It is his case that the 1st respondent will not get any right in respect of the building merely because the mortgage is also in respect of building to which the



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second respondent is are not the owner.

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7.Learned counsel appearing for the 1st respondent Bank has contested this petition. He disputed the case stated by the petitioner in the affidavit on facts. It is his case that the transfer in respect of the land would also include the building. He also stated that the petitioner has earlier approached this Court by filing a writ petition in W.P.No.20506 of 2023 for declaring the Memorandum of Deposit of Title Deeds as null and void. A learned Single Judge of this Court dismissed the writ petition, giving liberty to the petitioner to approach the appropriate forum in the manner known to law. The learned counsel further states that the appeal filed by the petitioner in W.A.No.2505 of 2023 was also disposed of giving liberty to the petitioner to approach the appropriate forum to establish his title to the building.

8.Since the petitioner has filed a suit to declare the mortgage as null and void, it is open to the petitioner to prosecute the said suit to its logical end. There cannot be a parallel remedy by way of a writ petition. It is to be pointed out that the learned Single Judge, while dismissing the writ petition



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in W.P.No.20506 of 2023 by order dated 12.07.2023, has observed that the nature of transactions between the petitioner and the 2nd respondent is not in accordance with law. The writ petitioner is a third party and he has to establish his title to the building only before the Civil Court and not before this Court by invoking its jurisdiction under Article 226 of the Constitution of India. Since the earlier writ petition filed by the petitioner was dismissed with a right preserved to the petitioner to approach the Civil Court for appropriate relief, this Court cannot have a different view, even though the present writ petition is one challenging the order of the learned Chief Judicial Magistrate in the application filed by the 1st respondent under Section 14 of the SARFAESI Act. The petitioner challenges the very sale deed by interpreting the same as one restricted to the land and not building. In view of the earlier order passed by this Court in the Writ Appeal, confirming the order of the learned Single Judge in W.P.No.20506 of 2023, this Court finds that the petitioner has an alternative and efficacious remedy and the petitioner has already availed such remedy of approaching the Civil Court. When the petitioner has raised contentious issues involving disputed questions of fact, it is always better for the petitioner to get a declaration



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before the Civil Court. Since the petitioner has already approached the Civil Court and the suit is pending, it may be open to seek appropriate interim relief before the Civil Court and this Court is not inclined to entertain this writ petition for the reasons stated above.

9. Accordingly, this writ petition is dismissed. However, the respondents shall maintain status *quo* for a period of two weeks from the date of receipt of a copy of this order, so as to enable the petitioner to get appropriate interim order from the Civil Court, on merits. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (N.S., J.)
08.07.2024

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

The Chief Judicial Magistrate,
Salem.

S.S. SUNDAR, J.



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and
N. SENTHILKUMAR, J.

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