



S.A.No.260 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on:
15.04.2024**

**Pronounced on:
10.06.2024**

Coram

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

**S.A.No.260 of 2024
and
C.M.P.No.8187 of 2024**

G.Thirumalai

...Appellant/Appellant/Plaintiff

VS

1. City Bank,
Rep.by its Manager,
Office at Victory Towers,
Tata Tele Services Limited,
At No.40, G.N.Chetty Road,
T.Nagar, Chennai-600 017.

2.D.Jaganathan

3.A.Shantha Kumar

...Respondents/Respondents/Defendants

Second Appeal filed under Section 100 C.P.C against the judgment and decree of the learned Subordinate Judge, Thiruvottiyur, dated 20.03.2023 in A.S.No.56 of 2022, dismissing the appeal confirming the decree and judgment of the District Munsif Court, Thiruvottiyur, in O.S.No.226 of 2010 dated 27.01.2021.



S.A.No.260 of 2024

For Appellant : Mr.K.Prabhakaran
For Respondent No.3 : Mr.P.V.Murlidhar

JUDGMENT

The unsuccessful plaintiff is the appellant herein and has filed this appeal challenging the judgment and decree passed in A.S.No.56 of 2022 dated 20.03.2023, by the learned Subordinate Judge, Thiruvottiyur, confirming the judgment and decree of the District Munsif Court, Thiruvottiyur, passed in O.S.No.226 of 2010 dated 27.01.2021.

2. For the sake of convenience and clarity, the parties are referred to as per their litigative status before the trial Court.

3. The plaintiff filed a suit in O.S.No.226 of 2010 seeking the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property. After trial, the suit was dismissed, against which, appeal has been filed in A.S.No.56 of 2022 before the Subordinate Court, Thiruvottiyur and the same was dismissed. Hence, this second appeal.



S.A.No.260 of 2024

WEB COPY

4. The suit property is a vacant land measuring 400 sq.ft with plot No.4 situated in S.Nos.287/2A, 1A, 1A2, in Ward "G" Block 17 at Pillaiyar Koil Street at Balakrishna Nagar, Thiruvottiyur Village and it belongs to P.V.Usha Rani. The plaint further proceeds that the original owner, namely, Usha Rani, offered to sell the suit property to the plaintiff and showed all the original title deeds relating to the property to the plaintiff. Therefore, on 07.02.2001, the plaintiff entered into an agreement of sale with Usha Rani to purchase the western half portion of the property. Thereafter, Usha Rani sold the western half portion to an extent of 2000 square feet measuring 20 feet east west and 100 feet North South to the plaintiff by a registered Sale Deed No.2109/2001 dated 25.05.2001. With respect to the eastern half portion of plot No.4 of Usha Rani, the plaintiff entered into another agreement of sale dated 03.11.2003 by paying an advance sale consideration of Rs.2,00,000/- and the total sale consideration was fixed at Rs.4,05,000/-. The agreement was renewed on 22.07.2008.



S.A.No.260 of 2024

5. The plaintiff claims that he is in possession of the

property, whereas, the third defendant claims that the property was mortgaged with the first defendant Bank for receiving home loan by the original owner, namely, P.V.Usha Rani and the original documents were deposited. As she committed default, her account was declared as non-performing asset and the necessary proceedings under SARFEASI Act was initiated by demanding a sum of Rs.3,35,469/- from Usha Rani and it was culminated in DRT Proceedings and Appeal proceedings and thereafter, by the order of the learned Chief Judicial Magistrate, Thiruvallur, in Cr.M.P.No.284 of 2010, Advocate Commissioner was appointed and possession of the suit property was taken by the Authorized Officer and the property was brought to auction and the third defendant is the successful bidder in the auction.

6. The third defendant filed a written statement alleging that the third defendant is an auction purchaser of the suit property which was brought for auction by the City Bank by its Authorized Officer after taking possession of the property as early as on 28.04.2010. The fact remains that



S.A.No.260 of 2024

WEB COPY

Usharani's husband, namely, Venkateswaralu, availed loan by pledging the property in Plot No.4, Pillayar Koil Street, Balakrishna Nagar, Thiruvottiyur, belonging to Usharani, in which, Usharani is the guarantor. The property was taken as hypothecation. Necessary loan documents were executed by B.Venkateswaralu and P.V.Usharani. As Equitable Mortgage was created on 20.04.2000 by depositing the entire title deeds standing in the name of P.V.Usharani, the Patta standing in the name of P.V.Usharani was also deposited with City Bank. When the entire documents or title were deposited with City Bank, how the original documents were verified by the plaintiff has also been stated in the plaint, assumes significance.

7. On the side of the plaintiff, the plaintiff was examined as P.W.1 and one Munusamy was examined as P.W.2 and Ex.A1 to Ex.A7 were marked. On the side of the defendants, S.Sudharshan, Power of Attorney of the first defendant Bank was examined as D.W.1 and the third defendant was examined as D.W.2 and Ex.B1 to Ex.B13 were marked.



S.A.No.260 of 2024

WEB COPY

8. On consideration of both oral and documentary evidence, the trial Court has come to a conclusion that on the date of filing the suit, the plaintiff is not in possession of the property and the original document, namely, the parent document in connection with the suit property was with the first defendant Bank and dismissed the suit and also held that since SARFAESI proceedings has been initiated against the original owner, the jurisdiction of the civil Court is barred under Section 34 of SARFAESI Act and a similar finding was also rendered by the First Appellate Court.

9. It is a specific contention of the first defendant that the suit was liable to be dismissed for want of jurisdiction under Section 34 of SARFAESI Act and it has been dealt with by both the trial Court and the Appellate Court.

10. The learned counsel appearing for the appellant would contend that the suit was filed for permanent injunction to protect the possession and it does not fall under the bar of jurisdiction under Section 34 of SARFAESI Act.



S.A.No.260 of 2024

WEB COPY

11. The learned counsel appearing for the third respondent relied on the judgment of the Hon'ble Supreme Court of India in the case of ***T.V.Ramakrishna Reddy vs. M.Mallappa*** and another reported in ***CDJ 2021 SC 612*** and the relevant paragraphs are extracted hereunder:-

"9. The issue is no more res integra. The position has been crystalised by this Court in the case of Anathula Sudhakar vs. P.Buchi Reddy (dead) by L.Rs. and others ((2008) 4 SCC 594) in paragraph 21, which read thus:

"21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But, in cases where de jure possession has to be established on the basis of title to the property, as in



WEB COPY



S.A.No.260 of 2024

the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar [Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 2021]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the Court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even when there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the Court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the Court may lead upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The Court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."



S.A.No.260 of 2024

WEB COPY

10. It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the Court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

11. No doubt, this Court has held that where there are necessary pleadings regarding title and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the Court may decide upon the issue regarding title, even in a suit for injunction. However, it has been held that such cases are the exception to the normal rule that question of title will not be decided in suits for injunction.

20. It will also be relevant to refer to the following observations of this Court in the case of Jharkhand State Housing Board v. Didar Singh and another ((2019) 17 SCC 692):

"11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases the plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only



WEB COPY



S.A.No.260 of 2024

when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, the plaintiff cannot maintain a suit for bare injunction".

12(a). On factual position, I find that the original sale deeds dated 12.08.1973, 06.06.1996 and 20.10.1999 were marked as Ex.B7 to Ex.B9 and Loan Agreement dated 01.04.2000 was marked as Ex.B2. According to the plaintiff, he purchased the property from the erstwhile owner under Ex.A1/Sale deed dated 25.05.2001 and on the date of the alleged sale in favour of the plaintiff, there was a mortgage deed as could be seen from the records. After initiation of SARFAESI proceedings, possession was taken over by the Authorized Officer, pursuant to the warrant issued by the learned Chief Judicial Magistrate, Thiruvallur. Both the Courts below have concurrently given a factual finding that possession of the property was taken by the Authorized Officer [first defendant] on 28.04.2010, in the presence of the Advocate Commissioner and the Police from M8, Sathangadu Police Station, as per the warrant issued by the Chief Judicial Magistrate, Thiruvallur, hence, on the date of filing of the suit itself, the plaintiff is not in possession of the property.

10/15



S.A.No.260 of 2024

WEB COPY

12(b). Further, Ex.B6/Sale Certificate has been issued on 01.12.2010. Therefore, both the Courts below have given a concurrent finding that possession of the property was taken by the Authorized Officer, as per the warrant issued by the Chief Judicial Magistrate and it was subjected to public auction and the third defendant was successful bidder in the public auction and paid the amount and delivery was registered on 01.12.2010 and from the date of purchase of the property in public auction, the third defendant is in possession and enjoyment of the suit property and also a specific finding has been given that the alleged agreement of sale dated 03.11.2003 between the original owner and the plaintiff is a created document.

12(c). The learned counsel appearing for the defendant has relied on the judgment reported in CDJ 2019 SC 1106 before the trial Court, wherein, the following has been stated:

"To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured



WEB COPY



S.A.No.260 of 2024

creditor under Section 14 of 2002 Act. We accordingly uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective over ruling pressed into service by the secured creditors (Bank)".

13(a). Hence, possession taken by the Authorized Officer pursuant to the warrant issued by the Chief Judicial Magistrate is valid in law, in view of the judgment of the Hon'ble Supreme Court of India as cited supra. This Court finds that though the suit property was said to have been taken possession by the first defendant, the possession of the property was handed over to the third defendant in public auction before filing the suit. Hence, on the date of filing the suit, the plaintiff is not in possession of the property and therefore, the relief of permanent injunction could not be granted.

13(b). Both the Courts below have given concurrent finding on the factual matrix and held that the proceedings under SARFAESI Act has



S.A.No.260 of 2024

WEB COPY

been initiated by the first defendant Bank which had culminated into public auction of the property and possession of the property was taken as per the warrant issued by the Chief Judicial Magistrate and possession was handed over to the third defendant even before filing of the suit and therefore, the claim of the plaintiff was rightly rejected by the trial Court and the First Appellate Court. Hence, I find no merit in this case and no substantial question of law is raised for admitting the second appeal.

14. Accordingly, this Second Appeal is dismissed. No costs. Connected miscellaneous petition is closed.

10.06.2024

Index:yes/no

Speaking Judgment/Non-Speaking Judgment

Neutral Citation:Yes/No

ssb

To

13/15



S.A.No.260 of 2024

WEB COPY

1. The Subordinate Court, Thiruvottiyur.
2. The District Munsif Court, Thiruvottiyur,
3. The Section Officer,
V.R. Section,
High Court, Chennai.



WEB COPY



S.A.No.260 of 2024

RMT.TEEKAA RAMAN, J.

ssb

S.A.No.260 of 2024

10.06.2024