



AS.No.76 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2024

PRONOUNCED ON : 05 .06.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

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1. Dr.Vijayalakshmi
2. V.Priyadharshini
3. V.Nithyanandhini

Appellants

Vs

1. P.Venkatachalam
2. C.Mani
3. Indian Overseas Bank, by its Branch Manager
Oddapatti Village, Thokkaampatt Post, Dharmapuri
4. K.Krishnan
5. G.Thiruman

Respondents

Prayer:- This Appeal Suit has been filed, under Section 96 of CPC read with Order 41 Rule 1 of CPC, against the judgement and decree, dated 26.11.2019, passed in OS.No.21 of 2008, by the Additional District Court, Dharmapuri.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.M.N.Mohan Raj-R1
Mrs.V.Rajeswari-R3
R4- No Appearance
Mr.P.Mani-R5

JUDGEMENT



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1. This Appeal Suit has been filed, by the unsuccessful Plaintiffs in OS.No.21 of 2008, against the judgement and decree, dated 26.11.2019, passed in the said suit, by the Additional District Court, Dharmapuri.
2. For the sake of convenience, the parties hereinafter are referred as per their litigation status before the Trial Court.
3. This Court heard the learned counsel for the Appellants and the contesting Respondents and also perused the entire materials placed on record.
4. The Plaintiffs have filed the suit for partition of Items (1) to (3) of the suit schedule properties and separate possession of the same and for permanent injunction. As per the plaint averments, the Plaintiffs are the daughters of the 1st Defendant and the 2nd Defendant, who is a third party, is the borrower. The 3rd Defendant is the Indian Overseas Bank.
5. The above suit was filed on the footing that the grand father of the Plaintiffs, namely, Palani Gounder, who was the Manager of the joint family properties, purchased item (1) of the suit properties on 09.06.1966 and item (3) of the suit properties on 19.04.1979 in the name of his daughter in law, Dhanakodiammal, mother of the Plaintiff. Based upon the funds generated from the joint family properties, he also purchased item (2) of the suit properties by a sale deed dated 21.02.1985 and the sale deed was executed in the name of his son, namely, the 1st Defendant. After the death of grand father of the Plaintiffs, Palani Gounder, the 1st Defendant became Kartha and



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the Plaintiffs claim partition on the basis of the Tamil Nadu Act 39 of 2005 and Act 1 of 1990. The mother Dhanakodiammal died on 10.10.1997. The 2nd Defendant borrowed the amount with the 3rd Defendant Bank. For the default committed, the property that was shown as security by P.Venkatachalam, the 1st Defendant along with his wife Dhanakodiammal, who stood as guarantors, the property was put in auction by initiating SARFAESI proceedings by the 3rd Defendant Bank. The 4th Defendant is the auction purchaser. As per Ex.A8, the 4th Respondent had sold the property, that he took in an auction purchase, in favour of the 5th Defendant under Ex.B2 sale deed.

6. In the written statement, filed by the 3rd Defendant Bank, it is stated that the 3rd Defendant was granted a loan for running a petrol bunk to the 2nd Defendant, Mani as a borrower and Palani Gounder (deceased), father of P.Venkatachalam and P.Venkatachalam and his wife Dhanakodiammal on 13.06.1985. The 3rd Defendant granted a loan of Rs.55,000/- as working capital and a term loan of Rs.75,000/-. The 2nd Defendant is the borrower and P.Venkatachalam, the 1st Defendant and his father deceased Palani Gounder and Dhanakodiammal were guarantors. They have executed the loan documents in favour of the 3rd Defendant Bank. The Plaintiffs are daughters of P.Venkatachalam, who is the 1st Defendant herein.

7. It is further stated by the 3rd Defendant that the 2nd Defendant was running a



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petrol bunk under the name and style of S.R.P.Agencies. The 1st Defendant and his father Palani Gounder and Dhanakodiammal have deposited original registered sale deeds dated 09.04.1966, 19.04.1979 and 21.02.1985 and they have created equitable mortgage on 13.06.1985 in favour of the Bank. The said properties were self acquired properties of P.Venkatachalam and Palani Gounder and Dhanakodiammal. The Defendants 1 and 2 and Palani Gounder and Dhanakodiammal defaulted in payment of loan amount due to the 3rd Defendant. Then, the 3rd Defendant filed a suit against the above said persons before the Subordinate Judge Court, Dharmapuri on 19.04.1990. The suit was numbered as OS.No.79 of 1991, wherein the Court passed a preliminary decree on 16.03.1992. On the basis of the said decree, a final decree petition in IA.No.362 of 1992 was filed on 29.07.1992, wherein a final decree was passed against Mani, Palani Gounder, P.Venkatachalam and Dhanakodiammal on 15.02.1993. On the basis of the said documents, an execution petition in REP.No.69 of 1995 was filed. During the pendency of EP, the 1st Defendant and his wife Dhanakodiammal have filed IA.No.150 of 1997 for condoning the delay of 1483 days. The Court allowed the said petitions on 12.12.1997 and 13.12.1997 and posted for filing a written statement on 28.07.2003. The 1st Defendant has not filed any written statement and remained exparte. The Court passed an exparte decree on 05.08.2003. Again, the 1st Defendant filed IA.No.280 of 2007 to condone



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the delay of 1718 days and the 3rd Defendant filed a counter along with a FS Memo. The Court dismissed the petition on merits and no revision is filed against the said order.

8. The 3rd Defendant has further stated that at the instigation of the 1st Defendant, the Plaintiffs filed the suit for partition and injunction against the the 3rd Defendant before the Subordinate Court, Dharmapuri in OS.No.16 of 2007. Again the Plaintiffs filed the suit before the Principal District Court, Dharmapuri at Krishnagiri in OS.No.86 of 2007 and an injunction petition in IA.No.184 of 2007 and it was transferred to the Additional District Court, Dharmapuri on 27.02.2008 and renumbered as OS.No.21 of 2008 and the said suit was dismissed on 14.02.2011 and again the said suit was restored.
9. It is the further statement of the 3rd Defendant Bank that the Authorised Officer, Salem had issued a notice under Section 13(2) and 13(4) of the SARFAESI Act and took possession of Item (2) of the suit properties on 21.02.2006 and the same was put in action in a public auction on 12.12.2007 and the sale was confirmed in favour of the 4th Defendant on 31.12.2007 and a sale certificate was issued on 07.01.2008 and the 4th Defendant sold the property, namely, item (2) of the suit properties to the 5th Defendant on 21.05.2008 and the said sale deed was also registered and the 5th Defendant is in possession and enjoyment of the said property.
10. From the written statement, I find that the DRT proceedings initiated by the



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1st Defendant in all Forums appear to have been dismissed. The Plaintiffs filed the suit at the instigation of the 1st Defendant to defraud the loan amount due to the 3rd Defendant. The Plaintiffs have not demanded for partition with his father before 05.11.2007. There is no documentary or oral evidence for demanding partition of the suit properties. The Plaintiffs have not filed the suit with clean hands. The Plaintiffs filed an amendment petition under Order 6 Rule 7 of CPC before the Additional District Court, Dharmapuri on 08.07.2015. The 3rd Defendant filed his counter and the said petition was also dismissed on merits on 05.08.2015. The Plaintiffs filed a revision petition for stay of the suit proceedings in CRP(PD)No.3241 of 2015, which was dismissed on 06.03.2018. The Plaintiffs did not file any appeal against the said order and hence, an order to delete the item (2) of the suit properties has to be passed. The suit is to be dismissed against the 3rd Defendant since this Court cannot pass any order against the award by the DRT Appellate Court, Chennai. In CRP(PD)No.2053 of 2013, by order dated 27.08.2019, this Court had directed the Trial Court to dispose of the suit in OS.No.21 of 2008 within a period of one month, with a direction to decide the issue of maintainability of the suit after framing necessary issues in this regard.

11.It appears that the learned Additional District Judge had considered the SARFAESI Act and held that the suit is not maintainable on the ground that the Plaintiffs selected a wrong Court and wrong forum. On perusal of the



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written statement filed by the Defendant Bank before the Trial Court, it is seen that the 3rd Defendant instituted proceedings under the SARFAESI Act and after public auction, the sale was held on 12.12.1997 and it was confirmed on 31.12.2007. The 3rd Defendant executed a sale certificate on 07.01.2008 in favour of the 4th Defendant, namely, Krishnan, who sold the same to the 5th Defendant on 21.05.2008 and the 5th Defendant is in possession of the same.

12.Before this Court, in this appeal, the Indian Overseas Bank, namely the 3rd Defendant has filed a list of dates and events, leading to attachment of item (2) of the suit properties under the SARFAESI Act and has also filed a counter statement, wherein in paragraph 4 of the Reply to the Grounds, it is stated that as regards the contents of paragraph 5 of the grounds of appeal, they do not have any objection in partition of the properties belonging to the alleged joint family of the Plaintiffs, without affecting the rights of the 3rd Respondent Bank with regard to the property mortgaged by the 1st Defendant and the rights already exercised by them in selling the same to the 4th Respondent.

13.In other words, the stand of the Bank is that in respect of the amount that are to be realised pursuant to the deposit of title deeds made by the 1st Defendant and the mother of the Plaintiff, namely, Dhanakodiammal, Item (2) of the suit properties was taken possession by invocation of provisions of the SARFAESI Act and the same was sold in the public auction and the 4th



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Defendant was the successful bidder and a sale certificate has also been issued and subsequently, he had also alienated the property in favour of the 5th Defendant and the 5th Defendant has put up a house and he is residing there. All the SARFAESI proceedings initiated by the 1st Defendant (father) has ended in dismissal and was confirmed by the Honourable Supreme Court.

14. Now, the Plaintiffs have taken a plea that the property purchased in the name of the P.Venkatachalam and in the name of Dhanakodiammal is in the character and nature of joint family properties. Now, the contesting Bank, the 3rd Defendant, has filed the above counter statement that the amount due for the Bank has been realised by selling item (2) of the property and hence, they also expressed that any order may be passed with regard to partition in respect of items (1) and (3) of the suit properties. Hence, in this view of the matter, I find that no discussion has been done by the Trial Court and hence, it is necessary for this Court to remand the case for retrial in respect of item (1) and (3) of the suit properties. Hence, the matter is to be remanded back to the Trial Court for consideration of the relief of partition in respect of items (1) and (3) of the suit properties and also for deciding the issue as to whether they are ancestral properties of the Plaintiffs or self-acquired properties of the Dhanakodiammal and the 1st Defendant, P.Venkatachalam and to pass orders, in accordance with law.

15. In the result, this Appeal Suit is allowed. The judgement and decree, dated



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26.11.2019, passed in OS.No.21 of 2008, by the Additional District Court, Dharmapuri is set aside. The matter is remanded back for reconsideration by the Additional District Court (Trial Court) Dharmapuri, in respect of items (1) and (3) of the suit properties, in view of the counter statement filed by the Bank before this Court on 10.08.2023. Such an exercise shall be completed within a period of twelve weeks after framing necessary issues. No costs.

05.06.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
Srcm

To

1. The Additional District Court, Dharmapuri.
2. The Record Keeper, VR Section, Madras High Court



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RMT.TEEKAA RAMAN, J.

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Pre-Delivery Judgement in
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