Orders Reserved on 20.08.2024	Orders Pronounced on 14.11.2024

Application No.8167 of 2018
in C.S.No.... of 2018 [C.S.D.No:68312 of 2018]

RMT.TEEKAA RAMAN, J.

The petition is filed by the Plaintiffs.

2.The first plaintiff is the absolute owner of the property bearing Plot No.78 (800 sq.ft.), Plot No.79 (832 sq.ft.) in Rajiv Garden, Okkiam Thoraipakkam Village, Tambaram Taluk, Kancheepuram District, Chennai admeasuring total extent of 1632 sq.ft. situated at Okkiam Thoraipakkam Village, Tambaram Taluk, Kancheepuram District as described in the suit 'A' schedule purchased the property by registered Sale Deed dated 12.07.2005, Registered as Document No.4144/2005, in the Office of the Sub-Registrar, Neelankarai.

3. The 2nd Plaintiff is the absolute owner of the property bearing Plot No.81 (832 sq.ft.), Plot No.82 (832 sq.ft.) and Plot No.83 (832 sq.ft.) in Rajiv Garden, Okkiam Thoraipakkam Village, Tambaram Taluk, Kancheepuram District, Chennai admeasuring total extent of 2496 sq.ft. as

described in the suit 'B' schedule hereunder having purchased the property by registered Sale Deed dated 12.07.2005, Registered as Document No.4145/2005, in the Office of the Sub-Registrar, Neelankarai, seeking leave of the Court to sue the defendants 4 to 17 in this Court.

4. When the matter was taken up earlier, by an order dated 20.06.2024, my predecessor asked the parties to advance the arguments on the maintainability. Accordingly, the matter was heard on the maintainability of the suit.

5. The present application is filed seeking leave of the Court to sue the defendants 4 to 17.

6. The main suit is filed for two reliefs:

(a) For declaration that the Sale Certificate No.1716/2007 dated 03.01.2007 registered on 21.03.2007 issued by the second defendant Recovery Officer, Debt Recovery Tribunal, Chennai is null and void and not binding on the plaintiff and;

(b) for permanent injunction restraining the defendants from interfering the plaintiffs' alleged peaceful possession.

7. The learned counsel for the applicants/plaintiffs would state that the main grievance of the plaintiffs is that the plaintiffs 1 & 2 have purchased the property from the 18th defendant on 12.07.2005 by two separate sale deeds. He further contended that there is a collision between the defendants and the plaintiffs. The respondents/defendants 7 to 17 did not give any power to their agent M/s.Palaniappa Estates, rep. by its Proprietor Mr.P.L.Sundaram as regards to mortgage the same. The power agent of the respondents 7 to 17 has acted in excess of what he has been equipped under the power deed and mortgaged the property with the 1st respondent/defendant who in turn colluded with the respondents/defendants 3 to 5 who are sister concerns and created the fraudulent Sale Certificate which is under challenge in the present suit. They trying to grab away the valuable property of the applicants and other land owners in the Rajiv Garden.

8. According to the learned counsel for the plaintiffs, the plaintiffs having purchased the property from the 18th defendant by the purchasers of

the defendants 7 to 17 have laid the power and given the power for Palaniappa Estates on 12.05.1992 and the fourth defendant purchased the land to the extent of 12 acres through public auction confirmed by the second respondent on 12.01.2007 resulted in registration of Sale Certificate in 1716/2007. Accordingly, now the fourth defendant claimed the ownership to the entire extent of 12 acres and trying to make forcible possession.

9(a). The next leg of the contention of the learned counsel for the applicants is that the first defendant is in collusion with Gemini Group of Companies along with 4^{th} and 5^{th} defendant managed to release the other mortgaged properties and fraudulently by way of collusion, sold this 12.03 acres by Public Auction to the 4th defendant, when the 5th defendant is none other than the sister concern of the 4th defendant, who had given one time settlement offer to the 1st defendant by his letters dated 02.02.2007 and 28.03.2007 on behalf of Gemini Group of Companies and on which basis the entire loan account was discharged by the 1st defendant bank and all other mortgaged properties are released except this 12.03 acres of Okkiam Thoraipakkam village, such the Sale Certificate registered in favour of the 4th defendant on 27.03.2007 is obtained by playing fraud on Court.

9(b) The General Power of Attorney given by the predecessor of defendants 7 to 17 in favour of M/s.Palaniappa Estates represented by its proprietor Mr.P.L.Sundaram dated 12.05.1992 does not contemplate any authority to the Power Agent to create equitable mortgage in favour of any bank for the loan availed by any third party collateral security to any financiers, when the present case, M/s.Palaniappa Estates had created equitable mortgage created in favour of the 1st defendant Bank for the entire extent of 12.03 acres, Okkiam Thoraipakkam village on 26.04.1993 as collateral security for the loan availed by the Principle borrower, viz., the 3rd defendant and the same is beyond the authority.

9(c). When the equitable mortgage created in favour of the 1st defendant Bank dated 26.04.1993 by the Power Agent M/s.Palaniappa Estate is without authority of law and the said mortgage is null and void. When the plaintiffs submit that they are under threat of forcible eviction from the suit property is view of fencing the entire property by the 4th defendant in March 2018. Hence, he could state that the suit is maintainable and seeks permission to sue the defendants as stated supra.

10. Heard Mr.Jayesh B.Dolia, learned Senior Counsel appearing for M/s.Aiyar & Dolia for the first respondent.

11(a). Mr.Jayesh B.Dolia, learned Senior Counsel would contend that the impugned order is Sale Certificate issued by the second defendant, viz., Recovery Officer, Debt Recovery Tribunal and hence, civil suit is not maintainable.

11(b). Furthermore, during the subsistence of mortgage by the 18th defendant with the first defendant, the sale was allowed to have been transferred in favour of the second plaintiff by a separate sale deed and hence, single suit in respect of two sale deeds cannot be club together and it ought to have been separate suits besides would state that the Sale Certificate was issued as early as on 2007. The present suit is filed only on 2018 and hence the suit is barred by limitation prayed for dismissal.

12(a). After hearing both the parties and also taking note of the provision of law under which the case has been filed and taking note of Clause 12 of the Letters Patent, I find that it is a suit filed by a third party to set aside the Sale Certificate issued on 03.01.2007 by the Debt Recovery Tribunal in pursuant of various applications filed on behalf of the bank for recovery of the amount advanced to the 18th defendant pursuant to the said Debt Recovery Tribunal sale by public auction. The auction purchaser has already taken possession of the property. Hence, I find that the suit has been filed after a period of 11 years assumes significance.

12(b).Yet another point is that in the decision reported in 2022 Live Law (SC) 941 wherein the Hon'ble Supreme Court has held as under:

> *"56. In view of the discussion aforesaid, the questions framed above are to be answered as under:*
>
> *(c) Is the jurisdiction of a Civil Court to try a suit filed by a borrower against a Bank or Financial Institution ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt by a Bank or Financial Institution?*
>
> *The aforesaid question ought to be answered first and is answered in the negative.*"

12(c). It remains to be stated that in the said judgment, the Hon'ble

Supreme Court has dealt with the legal right of the borrower to initiate proceedings before the Civil Court against Bank or Financial Institution which seeks to recover the loan amount. However, the factual matrix of the case in hand is totally different. Two independent persons who had purchased the property from the 18th defendant challenge the Sale Certificate issued by the Recovery Officer of the Debt Recovery Tribunal. There is a subsisting mortgage case is pending before the Debt Recovery Tribunal and hence, I find that the plaintiffs has no *locus standi* to challenge the Sale Certificate of Debt Recovery Tribunal before the Civil Court since they are not borrower.

12(d). Besides the suit is instituted after 11 years. In this proposed civil Suit, the quasi judicial order passed by the Debt Recovery Tribunal, after due paper publication, auction was held and Sale Certificate has been issued as early as on 03.01.2007 and registered on 27.03.2007 and earlier writ petitions have also been disposed of.

13. Hence, I find that by way of clever drafting, the applicants are trying to circumvent the established principles of law. A Sale Certificate

issued by the Debt Recovery Tribunal is a competent authority under the said Act and the same was registered. Now, it is not open for the third party to challenge the same after a lapse of such long years ie., 11 years before Civil Court and hence I am not inclined to grant leave and I find that it is a vexatious litigation. Accordingly, this application is dismissed.

14.11.2024

PJL

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