



S.A.No.872 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2025

PRESENT:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

S.A. No. 872 of 2014

and

M.P.No.1 of 2014

- 1.Mr.G.Sridharan (Died)
- 2.Mrs.R.Uma @ Geetha
- 3.Mrs.B.Vijayalakshmi (Died)
- 4.Mr.G.Sankar
- 5.Mrs.R.Latha
- 6.G.Balakrishanan
- 7.B.Laxmikanth
- 8.S.Sumathee
- 9.S.Siddharth

(Third appellant died

Appellants 6 & 7 are brought on record as L.R.s of the deceased A3 viz., B.Vijayalakshmi vide court order dated 29/01/2025 made in C.M.Ps.28126, 28128, 28130 of 2024 in SA 872 of 2014)

(First appellant died

Appellants 8 & 9 are brought on record as L.R.s of the deceased A1 viz., G.Sridharan vide court order dated 29/01/2025 made in C.M.P.s 28118, 28121, 28124 of



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...Appellants

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Vs.

M/s.Gokul Builder and Estates (Madras)Ltd.,
rep., by its Managing Director Mr.K.Balasikhamani
No.18, C.V.Raman Road,
Alwarpet,
Chennai – 600018.

(Gokul died. K.Balasikhamani substituted vide
court order dated 02.02.2022 made in C.M.P.No.1227
of 2022 in S.A.No.872 of 2014)

... Respondent

PRAYER: Second Appeal filed praying to set aside the Judgment and Decree dated 03.07.2014 made in A.S.No.453 of 2013 on the file of the XIX Additional City Civil Court, Chennai and restore the order of the trial Court dated 16.07.2013 in I.A.No.2274 of 2013 in O.S.No.7871 of 2012 on the file of the XV Assistant City Civil Court, Chennai and thus render justice.

For Appellants : Mr. S.P. Sudalaiyan.

For Respondent : Mr. S. Jayakumar.

J U D G M E N T

Heard.

2.This Second Appeal is filed against the judgment and decree dated 03.07.2013 passed by the XIX Additional City Civil Court, Chennai in A.S. No.453 of 2013, reversing the order dated 16.07.2013 passed in I.A. No.2274 of



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2013 in O.S. No.7871 of 2012 on the file of XV Assistant City Civil Court,
Chennai.

3.The appellants herein are the defendants in the suit. For the sake of convenience, the parties are referred to as arrayed in the suit.

4.The brief facts necessary for disposal of this Second Appeal are as follows:The plaintiff, a builder carrying on real estate business, filed the suit seeking a declaration that the agreement of sale dated 15.07.2012 entered into between the plaintiff and defendants in respect of the suit schedule property and the General Power of Attorney dated 15.07.2012 executed by the defendants in favour of one Mr. K. Balasikhamani are valid, subsisting and binding on the defendants, together with consequential permanent injunction restraining the defendants from alienating or encumbering the suit property in favour of third parties, and for costs.

5.The plaint averments disclose that the suit property originally belonged to one late G. Prema, who died intestate, leaving behind the defendants as her legal heirs. During her lifetime, the said G. Prema had deposited the title deeds of the suit property as guarantor for the loan obtained by M/s Bala Enterprises from



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Union Bank of India, Besant Nagar Branch, Chennai. Upon default, the Bank initiated recovery proceedings before the Debts Recovery Tribunal in the year 2002. By order dated 28.06.2012, the DRT held the defendants liable to pay a sum of Rs.27,35,356.86 with interest at 9% per annum.

6. According to the plaint, in order to discharge the liability to the Bank and recover the title deeds, the defendants entered into a sale agreement with the plaintiff on 15.07.2012 agreeing to sell the suit property for a total consideration of Rs.1,50,00,000/- and received an advance of Rs.7,00,000/-. The defendants agreed that upon clearing the Bank dues and obtaining the title deeds, they would complete the sale within the stipulated period. It is further stated that a General Power of Attorney was executed to enable the plaintiff to facilitate discharge of the loan in case the defendants failed to do so.

7. The plaintiff pleaded that though he was always ready and willing to perform his part of the contract, the defendants failed to discharge the loan and subsequently issued a telegram on 15.11.2012 unilaterally cancelling the agreement and the Power of Attorney, compelling the plaintiff to file the present suit.



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8.The defendants filed I.A. No.2274 of 2012 under Order VII Rule 11 CPC seeking rejection of the plaint primarily on the ground that the suit is barred under Section 34 of the SARFAESI Act, as DRT proceedings were already concluded and Recovery Certificate had been issued. It was also contended that the agreement was time-bound and the period had expired, rendering the contract unenforceable.

9.The plaintiff, in his counter, contended that the SARFAESI Act is concerned only with the Bank's recovery proceedings and the suit does not challenge the DRT order or the actions of the Bank. The plaintiff asserted that his contractual rights arising out of the agreement of sale and Power of Attorney are independent and outside the purview of SARFAESI and therefore not barred by Section 34.

10.The Trial Court allowed the application and rejected the plaint by order dated 16.07.2013. On appeal, the lower appellate court reversed the order and dismissed the application under Order VII Rule 11 CPC. Challenging the same, the present Second Appeal is filed.



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11.The principal contention raised by the appellant is that the civil suit is barred in view of Section 34 of the SARFAESI Act and reliance is placed upon the decision of the Hon'ble Supreme Court in *Jagdish Singh v. Heeralal*, [(2014) 1 SCC 479].

12.Section 34 bars the jurisdiction of civil courts in respect of matters which the DRT or DRAT is empowered to determine under the Act. Sections 17 and 18 of the Act provide for appeals regarding “measures” taken by the secured creditor under Section 13(4).

13.From a careful reading of the plaint averments, it is clear that the plaintiff does not challenge:

- i.the loan transaction,
- ii.the mortgage,
- iii.the order of the DRT,
- iv.the Recovery Certificate,
- v.any measure under Section 13(4), or
- vi.any action taken by the secured creditor.



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14.The suit is purely founded on enforcement of contractual obligations between private parties. The plaintiff seeks declaration only on the validity of the agreement of sale and Power of Attorney and seeks injunction against the defendants — not against the Bank.

15.The subject matter therefore does not arise out of any “measure” undertaken under Section 13(4) of the SARFAESI Act and consequently does not fall within the scope of jurisdiction of the DRT under Section 17.

16.In *Jagdish Singh's case (cited supra)*, the plaintiffs challenged auction proceedings and claimed ancestral rights in the mortgaged property. The Supreme Court held that such disputes must be resolved before the DRT and not by civil courts.In the present case,

- i.there is no challenge to SARFAESI proceedings,
- ii.there is no claim is made against the secured creditor, and
- iii.the plaintiff asserts no proprietary right based on HUF or ancestral status.

Hence, the said decision is clearly distinguishable on facts and does not apply to the present case.



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17.It is well-settled that while dealing with an application under Order VII Rule 11 CPC, the Court must confine itself strictly to the plaint averments alone and not examine the defence.

18.On perusal of the plaint, no statutory bar is disclosed. The rejection of plaint by the Trial Court was therefore unsustainable and the Appellate Court rightly reversed the same.

19.No substantial question of law arises for consideration under Section 100 CPC. The appeal merely seeks re-appreciation of facts and reopening of concurrent findings on jurisdiction, which is impermissible in second appellate jurisdiction.

20.In fine the Second Appeal is dismissed at the admission stage.No order as to costs.The order dated 16.07.2013 in I.A. No.2274 of 2012 in O.S. No.7871 of 2012 passed by the XV Assistant City Civil Court, Chennai rejecting the plaint, is set aside.The suit O.S. No.7871 of 2012 is restored to file. The Trial Court is directed to proceed with the suit and dispose of the same in accordance with law.Consequently, connected miscellaneous petition, if any stands closed.



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Index : Yes/No

NCC : Yes/No

Speaking Order / Non-Speaking Order

DR. A.D. MARIA CLETE, J

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To

1.The XIX Additional City Civil Court,
Chennai.

2.The XV Assistant City Civil Court,
Chennai.

3.The Section Officer,
V.R.Section,
High Court of Madras.

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