



O.S.A.Nos.22 & 25 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.01.2025

Pronounced on : 21.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P. DHANABAL

O.S.A.Nos.22 & 25 of 2020

and

C.M.P.No.24128 of 2024

O.S.A.No.22 of 2020 :

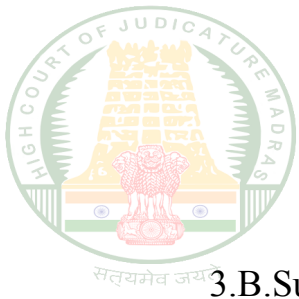
M/s.Dinakar Trading Company
Represented by its Proprietor
A.Balaganesan
No.25, Anna Pillai Street,
Chennai – 600 001.

... Appellant

Vs.

1.J.Sekar

2.Indian Overseas Bank,
Asset Recovery Management Branch,
Central Office, Annex Building, I Floor,
763, Anna Salai,
Chennai – 600 002,
Represented by its Authorised Officer



O.S.A.Nos.22 & 25 of 2020

3.B.Subash
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4.S.Venkateswaran

5.SPN.Sathyamurthy

6.SPN.Krishnamurthy

... Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules r/w. Clause 15 of the Letters Patent against the judgment and decree dated 04.10.2019 in C.S.No.1134 of 2008 on the Original Side of this Court.

For Appellant	:	Mr.R.Balachandran
For R1	:	Mr.K.V.Babu
For R2	:	Mr.F.B.Benjamin George (No appearance)
R3 and R4	:	No such person
R5 and R6	:	Mr.S.Rajendra Kumar

O.S.A.No.25 of 2020 :

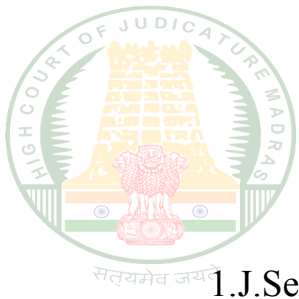
1.S.P.N.Sathyamurthy

2.S.P.N.Krishnamurthy

... Appellants

Vs.

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1.J.Sekar
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2.Indian Overseas Bank,
Assets Recovery Management Branch,
Central Office Annex Building,
I Floor, 763, Anna Salai,
Chennai – 600 002,
Represented by its Authorised Officer

3.M/s.Dinakar Trading Company
Represented by its Proprietor
A.Balaganesan
No.25, Anna Pillai Street,
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... Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules r/w. Clause 15 of the Letters Patent against the judgment and decree dated 04.10.2019 in C.S.No.1134 of 2008 on the Original Side of this Court.

For Appellants	:	Mr.S.Rajendra Kumar
For R1	:	Mr.K.V.Babu
For R2	:	Mr.F.B.Benjamin George (No appearance)
For R3	:	Mr.R.Balachandran



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R4 : No such person

R5 : Door Locked

COMMON JUDGMENT

S.S. SUNDAR, J.

The above Original Side Appeals have been preferred by M/s.Dinakar Trading Company, the 2nd defendant, and defendants 5 and 6, respectively, as against the judgment and decree of the learned Single Judge of this Court dated 04.10.2019 in C.S.No.1134 of 2008. While the Appeal in O.S.A.No.22 of 2020 is preferred by the 2nd defendant in the suit, the Appeal in O.S.A.No.25 of 2020 is preferred by defendants 5 and 6 in the suit.

2.The 1st respondent, as plaintiff, filed the suit in C.S.No.1134 of 2008 for the following reliefs :

“[a] for a declaration declaring that the sale deed dated 07/04/2005, registered as Document No. 1121 of 2005 in Book I in the office of the Sub Registrar, Mylapore, executed by the 2nd defendant and others in favour of the 3rd



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Defendant herein, in so far as it relates to the suit schedule mentioned property, as sham and nominal;

[b] for a declaration, declaring that the power of Attorney dated 18/02/2008, registered as document No. 325 of 2008 in Book IV in the office of the District Registrar, South Chennai, executed by the 3rd Defendant in favour of the 4th Defendant as null and void in so far as it relates to the suit schedule mentioned property;

[c] for a consequential declaration, declaring that the sale deed 20/02/2008 Registered as document No.379 of 2008 in Book I in the office of the Sub Registrar, Mylapore, executed by the 4th Defendant in his Capacity as power Agent of 3rd Defendant in favour of 5th and 6th Defendants is null and void, Sham and nominal and not binding on the plaintiff in so far as it is relates to the suit schedule mentioned property;

[d] consequently direct the defendants 5 and 6 herein to handover vacant possession of the suit schedule mentioned property to the plaintiff herein;



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[e] directing the Defendants 5 and 6 herein to pay damages for use and occupation at Rs.1,00,000/- per month from the date of plaint till handing over possession;

[f] direct the 1st Defendant to pay interest at commercial rate of interest towards the entire sale consideration held by them from the date of issuing the sale Certificate to till the date the plaintiff is put in vacant peaceful possession of the suit property;

[g] for the cost of the suit; and

[f] for any other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.”

The suit property is described as 50% of Undivided Share and interest over the land measuring an extent of 7,518 sq.ft. along with entire First Floor of the entire superstructure bearing Old No.53, New No.152, Ganesh Bhavan, Greenways Road, Kesavaperumalpuram, Chennai – 28.



WEB COPY 3. Since both the Appeals arise out of the judgment and decree in the suit in C.S.No.1134 of 2008, they are disposed of by this common judgment.

4. Brief facts that are necessary for the disposal of these Appeals are as follows :

4.1. The appellant in O.S.A.No.22 of 2020, who is the 2nd defendant in the suit, availed certain credit facilities from the 1st defendant Bank with its Branch at Broadway. Since the 2nd defendant committed default in repaying the loan, the 1st defendant Bank declared the account as NPA. The loan advanced to the 2nd defendant was secured by the suit property belongs to the Proprietor of the 2nd defendant. Hereinafter, reference to 2nd defendant would mean the 2nd defendant and its Proprietor. Hence, the 1st defendant invoked the provisions of the SARFAESI Act and issued a notice of demand on 10.08.2002. It is stated by the 1st defendant that the borrower neither raised any objection nor paid the amount. The 1st defendant took symbolic possession of the Secured Asset on 02.12.2003 by issuing a notice.



WEB COPY 4.2.The 2nd defendant borrower challenged the proceedings initiated by the 1st defendant by filing writ petitions in W.P.Nos.5306 of 2004 and 5607 of 2004. However, the said writ petitions were dismissed giving liberty to the borrower to avail the alternative remedy.

4.3.Meanwhile, the 1st defendant filed an application in O.A.No.5 of 2003 on the file of Debts Recovery Tribunal-II, Chennai, under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, to recover a sum of Rs.67,12,099.61 together with subsequent interest at the applicable rate from 27.09.2001, to save limitation. Later, the 1st defendant brought the Secured Asset for sale under SARFAESI Act by issuing a sale notice on 16.12.2004. When the sale notice was issued, there was no challenge. However, the sale proposed on 25.01.2005 did not go through for want of bidders.

4.4.When the Bank had already initiated proceedings under SARFAESI Act, after taking symbolic possession, the 1st defendant came to



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know that a sale deed dated 27.04.2005 had been executed by the borrower/2nd defendant in favour of 3rd defendant in respect of the Secured Asset, namely, the suit property. As per the sale deed dated 27.04.2005, the Secured Asset along with the remaining share was sold for a sum of Rs.2,77,00,000/-. Immediately, the 1st defendant Bank lodged a criminal complaint on the file of Additional City Metropolitan Magistrate Court under Section 200 of Cr.P.C. against the Proprietor of 2nd defendant by name Balaganesan and the 3rd defendant under Section 420 of IPC and Section 29 of the SARFAESI Act on 23.06.2005.

4.5. Thereafter, on 16.06.2005, Balaganesan filed a writ petition bearing W.P.No.27168 of 2005 forbearing the 1st defendant Bank from interfering with the possession of the Secured Asset. Another writ petition was also filed by him in W.P.No.8380 of 2006 for issuing a Writ of Mandamus against the 1st defendant Bank to withdraw the Original Application in O.A.No.5 of 2003 on the file of the Debts Recovery Tribunal-II, Chennai. Both the writ petitions were disposed of on 16.06.2006 giving liberty to the borrower to avail the alternative remedy.



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4.6. Since symbolic possession of the Secured Asset was taken on 02.12.2003 and the physical possession remained with the borrower, the 1st defendant filed an application under Section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate, seeking his assistance for taking physical possession by the 1st defendant Bank in CrI.M.P.No.120 of 2007. The said petition was allowed by an order dated 20.01.2007 appointing an Advocate Commissioner to take physical possession of the property in question and to hand over the same to the 1st defendant. Though it is recorded that the Advocate Commissioner had executed the warrant on 01.02.2007, it is admitted that access to the suit property, i.e., the First Floor of the building, was closed with brick wall. Since the 1st defendant came to know that the access to the First Floor was closed, the 1st defendant filed a Miscellaneous Petition in CrI.M.P.No.120 of 2007 on the file of the Chief Metropolitan Magistrate, praying to direct the Advocate Commissioner to break open the entrance and deliver vacant possession to the 1st defendant. However, in the said application, no order has been passed.



WEB COPY 4.7.After the order dated 20.01.2007 passed by the Chief Metropolitan Magistrate for taking physical possession of the property, in the application filed by the Bank under Section 14 of the SARFAESI Act, a second sale notice was issued by the 1st defendant Bank, fixing the date for tender-cum-auction on 24.03.2007 at 11.00 a.m. The plaintiff, pursuant to the tender-cum-auction notice dated 15.02.2007 published by the 1st defendant Bank, participated in the auction dated 24.03.2007 conducted by the Authorised Officer of the 1st defendant Bank. The plaintiff was the successful bidder who had bid the suit property for a sum of Rs.1,61,50,000/-. As per the conditions laid down under the tender-cum-auction sale notice dated 15.02.2007, the plaintiff paid 25% of the bid amount after deducting the Earnest Money Deposit of Rs.15,00,000/- by a cheque drawn in favour of 1st defendant Bank dated 24.03.2007.

4.8.The 3rd defendant, who had purchased the property from the mortgagor 2nd defendant, filed an application in SARFAESI Application No.97 of 2007 before the Debts Recovery Tribunal-II, Chennai, praying for



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an order of injunction restraining the 1st defendant from alienating the entire suit property measuring an extent of 7,518 sq.ft., even though he has bought only the Undivided Half Share together with First Floor of the building. The Debts Recovery Tribunal-II, Chennai, while granting interim stay on 12.03.2007, passed a conditional order directing the 3rd defendant to deposit a sum of Rs.67,20,520.61 on or before 23.03.2007. The 1st defendant Bank was directed to defer the sale in case the 3rd defendant deposits the said sum. The 3rd defendant was also directed to deposit a further sum of Rs.30,60,138.43 towards part of interest subject to final adjudication.

4.9.However, the 3rd defendant challenged the order by filing an Appeal in (IN)S.A.No.168 of 2007 challenging the conditional order of Debts Recovery Tribunal-II, Chennai, dated 12.03.2007, in SARFAESI Application No.97 of 2007. It was contended by the 3rd defendant that he is not liable to pay the said amount and further, time granted by Debts Recovery Tribunal-II, Chennai, is too short to make arrangements to pay the amount. Since it was mentioned by the 3rd defendant that the sale was posted on 24.03.2007, the Debts Recovery Appellate Tribunal, Chennai, by



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order dated 22.03.2007, granted interim stay on condition that the 3rd defendant should deposit a sum of Rs.35,00,000/- with the respondent Bank, out of which, a sum of Rs.5,00,000/- should be deposited on or before 23.03.2007 and further sum of Rs.15,00,000/- should be deposited on or before 20.04.2007 and the balance of Rs.15,00,000/- on or before 20.05.2007.

4.10. Meanwhile, the 1st defendant Bank preferred a Civil Revision Petition in C.R.P.No.839 of 2007 before this Court to strike off the proceedings in SARFAESI Application No.97 of 2007 on the file of the Debts Recovery Tribunal-II, Chennai. Even during the pendency of the Civil Revision Petition, this Court was pleased to permit the 1st defendant to go ahead with the auction sale, but not to confirm the sale until further orders from this Court in the main Civil Revision Petition. Thereafter, the Civil Revision Petition was allowed and the SARFAESI Application No.97 of 2007 before the Debts Recovery Tribunal-II, Chennai, was struck off by this Court by order dated 21.07.2007, after taking note of the fact that the mortgaged property had been sold in the auction to the plaintiff for the bid



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amount of Rs.1,61,50,000/-.

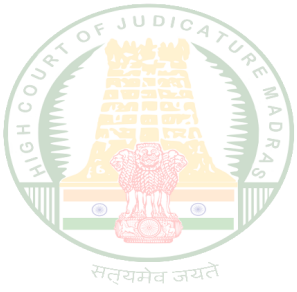
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4.11.As against the order of this Court in the Civil Revision Petition in C.R.P.No.839 of 2007, dated 21.07.2007, the 3rd defendant preferred a Special Leave Petition before the Hon'ble Supreme Court. It is to be noted that the 3rd defendant has not even impleaded the auction purchaser before the Hon'ble Supreme Court.

4.12.The Hon'ble Supreme Court, by order dated 06.08.2007, has passed the following order :

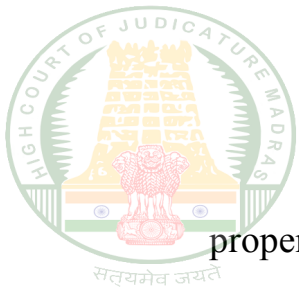
“We find no merit in this petition. However, since an offer is made for settlement we make it clear that the petitioner shall deposit the amount of debt calculated till today with interest in this Registry within four weeks from today. If the amount is not deposited, the special leave petition shall stand dismissed.”

4.13.Later, the Hon'ble Supreme Court in its order dated 17.09.2007, directed the 3rd defendant, who is the petitioner in Special Leave Petition, to implead the highest bidder, the plaintiff in the present suit.



WEB COPY 4.14.It is stated by the 3rd defendant that he has paid the entire loan amount as determined by the 1st defendant, pursuant to the directions of the Hon'ble Supreme Court, on 03.09.2007. However, the Hon'ble Supreme Court dismissed the Special Leave Petition by order dated 07.12.2007 with a direction regarding refund of money deposited.

4.15.After the dismissal of Special Leave Petition by Hon'ble Supreme Court, the plaintiff deposited the balance of consideration of Rs.1,21,12,500/- on 25.01.2008 with the 1st defendant Bank in terms of the original auction sale notice and pursuant to the letter of the 1st defendant Bank dated 11.01.2008. Thereafter, the plaintiff, by letter dated 25.01.2008, requested the 1st defendant Bank to arrange for handing over of physical possession of the suit property along with sale certificate. The 1st defendant issued a sale certificate on 31.01.2008 specifically mentioning that the physical possession of the suit property is being handed over to the plaintiff. Thereafter, the plaintiff, on many occasions, addressed letters to the 1st defendant Bank to take steps to hand over vacant possession of the suit



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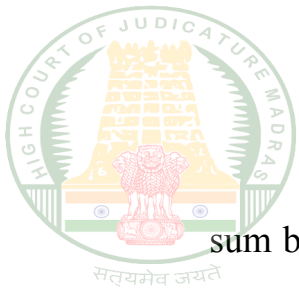
property. However, it is admitted even in the written statement filed by the 1st defendant that physical possession of the suit property was not handed over to the plaintiff by the Bank. It is also admitted in the pleadings that the physical possession of the property is with third parties. The plaintiff was further surprised after seeing the Encumbrance Certificate which revealed that the suit property has been dealt with by the 3rd defendant. By a sale deed dated 20.02.2008, the 3rd defendant sold the property in favour of defendants 5 and 6 through his Power of Attorney Agent who has been impleaded as 4th defendant in the suit. The said Power of Attorney is dated 18.02.2008. By the said sale deed, the Power of Attorney Agent of the 3rd defendant has sold the suit property along with the Ground Floor building and the remaining 50% of the land in favour of the defendants 5 and 6.

5.It is in the factual background, the suit in C.S.No.1134 of 2008 is laid by the 1st respondent plaintiff for recovery of possession and for declaration declaring the sale deed dated 07.04.2005, the Power of Attorney dated 18.02.2008, and the sale deed dated 20.02.2008, as null and void; and for other reliefs.



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6.The 2nd defendant mortgagor, the appellant in O.S.A.No.22 of 2020, filed a written statement describing the sale certificate in favour of the plaintiff as fraudulent, illegal and void, as the sale certificate was issued without the knowledge of the mortgagor. It is contended that the 2nd defendant came to know about the sale certificate only on 16.02.2012 and therefore, he is taking steps to get the sale certificate set aside, by initiating independent action. He contended that the Ground Floor and First Floor portion of the building with Undivided 50% Share was given to him and his brother by his father and the settlees cannot sell any portion of the whole plot and building to third parties without giving option to the other sharer to purchase the other 50% share. He also contended that Balaganesan, mortgagor, by a letter dated 03.09.2007, through the 3rd defendant, offered to make a payment of a sum of Rs.1,71,00,000/- to the 1st defendant Bank towards full and final settlement of the entire claim amount and requested the 1st defendant to return all the documents of title to the 3rd defendant. Since the 1st defendant accepted the offer, the 3rd defendant paid the entire amount to the 1st defendant Bank on 03.09.2007 instead of depositing the



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sum before the Registry of the Hon'ble Supreme Court as per the directions of the Hon'ble Supreme Court. Though the 2nd defendant admits the dismissal of Special Leave Petition, it is contended by the 2nd defendant that the order of Hon'ble Supreme Court gives no right to the 1st defendant Bank to violate the statutory obligation of the 1st defendant Bank to credit the payment made by the 3rd defendant in the loan account of the 2nd defendant and discharge the suit property from the mortgage. It is reiterated that Balaganesan, in his capacity as mortgagor, through the 3rd defendant, deposited the entire amount due. The 2nd defendant contended that the 1st defendant Bank is bound to adjust the payment made by the 2nd defendant and discharge the mortgage created by Balaganesan. It was, therefore, contended that the confirmation of sale on 11.01.2008 and the sale certificate issued in favour of the plaintiff is illegal, void and fraudulent. Apart from questioning the sale, the 2nd defendant pleaded collusion between plaintiff and 1st defendant in issuing the sale certificate in favour of the plaintiff without actual possession being handed over. Every averment in the plaint is denied as false.



WEB COPY 7. Defendants 5 and 6, the appellants in O.S.A.No.25 of 2020, have filed an independent written statement reiterating almost all the contentions that are raised by the 2nd defendant. The defendants 5 and 6, in their written statement, refer to an agreement of sale, dated 05.07.2007, regarding the sale of suit property, and claimed to have paid a huge sum without the knowledge of the mortgage. It is their contention that the owner of the property divulged that the property was under mortgage with the Standard Chartered Bank, Armenian Street, Chennai-1 and the owners had obtained a loan of Rs.2,30,00,000/-. When defendants 5 and 6 requested the owners to clear the mortgage loan and execute the sale deed in their favour, they executed a sale deed through their Power of Attorney Agent by sale deed dated 20.02.2008. It is learnt from the sale deed that the 3rd defendant had purchased the entire land along with the whole building from Balaganesan and the legal heirs of his brother by the document of sale dated 27.04.2005. The total consideration for the property is Rs.3,00,00,000/-, out of which, Rs.50,00,000/- was paid as advance and remaining balance was to be adjusted towards the mortgage loan availed by the 3rd defendant by



mortgaging the entire property in favour of Standard Chartered Bank.

There is a reference to the mortgage created by the 3rd defendant by mortgaging the entire property for a sum of Rs.2,50,00,000/-.

8.Defendants 5 and 6, in their written statement, have further stated that the total amount due towards mortgage in favour of Standard Chartered Bank was a sum of Rs.2,23,21,771/-. It is stated that the defendants 5 and 6 are negotiating with the Bank for clearing the entire loan under One Time Settlement. Though defendants 5 and 6 admit that 50% Undivided Share along with First Floor portion had already been sold in public auction that was held on 24.03.2007, it is contended that the sale in favour of the plaintiff is void. While contending that the 3rd defendant had not divulged the mortgage of portion of the property with the 1st defendant Bank, it is contended that the 3rd defendant should indemnify and clear the property from mortgage dues in respect of the property and that the defendants 5 and 6 are entitled to make use of the deposit made by the 3rd defendant to the tune of Rs.1,71,00,000/-. As purchasers, they claim that they are also entitled to compel the 1st defendant Bank to adjust the amount deposited by



the 3rd defendant against the mortgage due. Defendants 5 and 6 also reiterate that the 1st defendant Bank ought not to have executed the sale certificate in favour of the plaintiff, especially when balance amount had not been paid by the auction purchaser, the plaintiff in the suit, violating the statutory provisions.

9.The 4th defendant also filed an independent written statement. However, as Power of Attorney Agent of the 3rd defendant, his version is limited to the knowledge he had about the dispute among the parties in the present litigation.

10.Learned Single Judge framed the following issues :

“(1) Whether the sale deed dated 27.04.2005 executed by the second defendant and others in favour of the third defendant is a sham and nominal document in so far as it relates to the suit schedule property?

(2) Whether the Power of Attorney dated 18.02.2008 executed by the third defendant in favour of the fourth



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defendant is null and void in so far as it relates to the suit schedule property ?

(3) Whether the sale deed dated 20.02.2008 executed by the fourth defendant in his capacity as power agent of the third defendant in favour of the defendants 5 & 6 without divulging the inherent defects of the property is a sham and nominal document ? If it is so whether it will not bind upon the plaintiff insofar as it relates to the suit schedule property ?

(4) Whether the plaintiff is entitled to have the vacant possession of the suit schedule property from the hands of the defendants 5 and 6 ?

(5) Whether the plaintiff is entitled to have the relief of damages to the extent of Rs.1,00,000/- for use and occupation of the suit schedule property per month till date of handing over the possession by the defendants 5 and 6 ?

(6) Whether the plaintiff is entitled to the relief of declaration that he is the owner of the entire first floor of superstructure with 50% of UDS when there is no first floor in the suit property ?



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(7) Is the suit maintainable since 50% UDS alone has been mortgaged by the third defendant in favour of the first defendant ?

(8) Is the plaintiff a bonafide purchaser of suit property?

(9) Is the suit suffering from non-joinder of necessary ?

(10) To what other reliefs, are the parties entitled to ?”

11. Additional issues were also framed by the learned Single Judge on 28.08.2018, which are as follows :

“(1) Whether the suit is maintainable in the light of the bar set out under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI) ?

(2) Whether the suit claim is to be accepted in the light of the provisions of Section 13 (8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI) ?



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(3) What is the effect of non-registration of sale certificate dated 30.01.2008, filed under Ex.P.17 ?”

12. Even though it was not specifically raised in the written statement filed by the contesting defendants, the learned Judge has considered the maintainability of the suit by referring to Section 34 of the SARFAESI Act. After relying upon several precedents, on the point, the learned Judge held that the prayers in the suit fall outside the jurisdiction of Debts Recovery Tribunal and the issues between parties raised in the present suit cannot be decided by the Tribunal. The learned Single Judge, therefore, held that the suit is not barred under Section 34 of the SARFAESI Act. Hence, the objection raised by the contesting defendants relying upon Section 34 was rejected and the Additional Issue No.1 was answered in favour of the plaintiff.

13. In Additional Issue No.2, the learned Judge found that the 2nd defendant borrower had not challenged the proceedings initiated under SARFAESI Act right from the issuance of notice under Section 13(2)



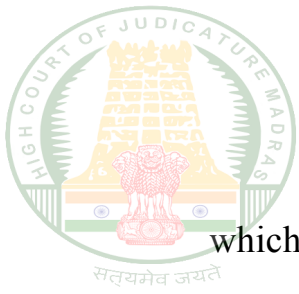
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followed by subsequent proceedings. When the 2nd defendant was not ready and willing to tender his money to the Secured Creditor in order to save the property being brought to sale, and when the confirmation of sale and sale certificate issued in favour of plaintiff is not under challenge in any forum, the learned Single Judge observed that the borrower is bound by the sale. Referring to the fact that Hon'ble Supreme Court had dismissed the Special Leave Petition, the learned Judge held that the alleged right of redemption, which was indirectly rejected by the Hon'ble Supreme Court, cannot be availed now in the present suit where there is no challenge to the sale. Referring to the factual position above narrated and considering the scope of Section 13(8) read with Rules 8 and 9, Additional Issue No.2 was also answered in favour of the plaintiff. The contention that transfer of title has not passed on to the plaintiff for want of physical possession was also negatived by the learned Judge. It is held that the sale becomes complete and right in the property vests with the auction purchaser once auction sale is confirmed and Sale Certificate is issued. Learned Judge also held that there was no valid tender and hence, the contention that the mortgage should be treated as discharged, was negatived.



WEB COPY 14.By referring to the factual sequence, the learned Judge held that, in view of pendency of SARFAESI proceedings pursuant to issuance of notice under Section 13(2) of SARFAESI Act, and after taking symbolic possession, there is no scope for saving the sale deed dated 27.04.2005 executed by the 2nd defendant in favour of 3rd defendant. After a detailed discussion on the scope of provisions of Section 13(6) of SARFAESI Act, Rules 8 and 9 of SARFAESI Act, the learned Judge held the sale in favour of 3rd defendant is void and is not binding on the plaintiff. On similar lines, the Power of Attorney executed by the 3rd defendant in favour of 4th defendant, dated 18.02.2008, and the sale deed dated 20.02.2008 executed by the Power of Attorney Agent of the 3rd defendant in favour of defendants 5 and 6, were held to be void. Accordingly, Issues (1) to (3) were answered in favour of the plaintiff.

15.In view of the findings on Issues (1) to (3), Issues (4) to (8) were also answered against the defendants and in favour of the plaintiff, holding that the plaintiff is a *bona fide* purchaser and is entitled to have his share to



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which the borrower was entitled to.

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16. Similarly, Issues (9) and (10) were decided as unnecessary, having regard to the specific findings on all other issues.

17. The learned Judge, therefore, decreed the suit by granting the prayers (a) to (d). In respect of prayers (e) and (f), the suit was dismissed. The learned Judge observed that it is open to the plaintiff to get the sale certificate registered to safeguard the plaintiff's interest, within a period of eight weeks.

18. Aggrieved by the judgment and decree of the learned Single Judge, the 2nd defendant and the defendants 5 and 6 have respectively preferred the above Appeals in O.S.A.Nos.22 and 25 of 2020.

19. Learned counsel for the appellant in O.S.A.No.22 of 2020, namely, the 2nd defendant, has reiterated the following facts :

(a) Under Exs.P1 and P2 notices, the 1st defendant has reserved its right



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to accept or decline the highest bid. Before confirmation of sale under Ex.P7, stay was granted in Civil Revision Petition in pending C.R.P.No.839 of 2007. When auction was conducted on 24.03.2007, the plaintiff took part in the auction knowing that the validity of sale is questioned. Even though there is no provision to pay interest on the 25% bid amount to the successful bidder, the Bank has calculated interest on the 25% of bid amount in favour of the plaintiff at the request of plaintiff. By a communication dated 26.04.2007, the plaintiff requested the 1st defendant Bank to keep 25% of the bid amount in an interest bearing account in his name and to pay the accrued interest to him. Since there is no statutory requirement to pay interest on the 25% of the bid amount by keeping the amount in an interest bearing account in the name of plaintiff himself, it is contended by the learned counsel appearing for the appellant/2nd defendant that the sale is void for the reason that the plaintiff had not paid the amount as required by the provisions of the Statute. In other words, it is contended that the sale in favour of the plaintiff, who got the 25% of the bid amount deposited by him immediately after



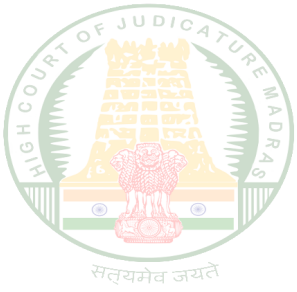
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auction transferred from the loan account to an interest bearing account in the name of plaintiff, is invalid.

(b) Since the entire amount due to the Bank is deposited by the 3rd defendant, the learned Judge ought to have held that the whole mortgage is discharged. This submission is based on pre-amended Section 13(8) of SARFAESI Act.

20. Learned counsel appearing for the appellants in O.S.A.No.25 of 2020, namely, defendants 5 and 6, has raised the following grounds :

- (a) Under Section 34 of SARFAESI Act, no Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered under the Act to determine and no injunction shall be granted by any Court.
- (b) The suit filed by the plaintiff/1st respondent is barred under Section 34 and Section 14 of the SARFAESI Act.
- (c) The plaintiff is not entitled to get the sale confirmed in his favour, as the interest on the 25% of the bid amount was transferred to an



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interest bearing account at the request of plaintiff and that the interest accrued on such amount was returned to the plaintiff.

(d) Since the entire money due under the mortgage was received by the 1st defendant Bank pursuant to the directions of Hon'ble Supreme Court and such payment was received even before confirmation of sale, the mortgage shall be treated as discharged.

21. Even though several grounds were raised in the Appeals, the learned counsels appearing for the appellants confined their arguments to certain points. Hence, considering the submissions of all the parties to these Appeals, this Court finds it appropriate to frame the following points for determination :

(1) Whether the Civil Court has jurisdiction to entertain the suit, in view of the bar under Section 14 and Section 34 of SARFAESI Act ?

(2) Whether the plaintiff, who got the bid amount of 25% transferred to an interest bearing account, is entitled to get the sale confirmed in his favour ?



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(3) Whether the payment made on 03.09.2007 by the 3rd defendant pursuant to the directions of Hon'ble Supreme Court should be accepted by the 1st defendant to discharge the mortgage in compliance with the pre-amended Section 13(8) of SARFAESI Act ?

Issue No.(1) :

22. On the first issue, it is relevant to extract Section 14 and Section 34 of the SARFAESI Act, for convenience :

“14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.—(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or,



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as the case may be, the District Magistrate shall, on such request being made to him -

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor: Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of



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the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of



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the secured assets within a period of thirty days from the date of application:

Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be



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taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

...

34.Civil court not to have jurisdiction.—*No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).”*

23. Section 34 of the SARFAESI Act bars the Civil Court from entertaining any suit or proceedings in respect of any matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to decide



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under the SARFAESI Act. No injunction can also be granted by any Court in respect of any action taken or to be taken in exercise of any power conferred under the SARFAESI Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

24.The present suit is for recovery of possession of property from strangers who claimed to be in possession on the basis of a void sale deed executed by the mortgagor during subsistence of mortgage and after symbolic possession was taken. In this case, it is not in dispute that the borrower failed to discharge his liability after receiving notice under Sub-Section (2) of Section 13 of the SARFAESI Act and that the Bank had taken symbolic possession of the Secured Asset. Under Sub-Section (6) of Section 13, any transfer of Secured Asset after taking possession thereof under Sub-Section (4) of Section 13 by the Secured Creditor shall vest in the transferee all rights or in relation to the Secured Asset transferred as if the transfer had been made by the owner of such Secured Asset. There is a statutory prohibition under Sub-Section (13) of Section 13 to the effect that no borrower, after the receipt of notice referred to in Sub-Section (2) of



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Section 13, can transfer by way of sale or lease or otherwise any of his Secured Asset without prior written consent of the Secured Creditor. It is by virtue of the statutory prohibition, the sale deed executed by the 2nd defendant in favour of 3rd defendant is void.

25. Similarly, it is admitted that the appellants have closed the entry to the First Floor preventing the Advocate Commissioner from handing over physical possession of the suit property to the plaintiff. It is in the stated circumstances, the suit is laid for declaring all the transactions in relation to the Secured Asset as null and void. The scope of Section 34 of the SARFAESI Act is limited and that does not bar the present suit filed by the 1st respondent for the reliefs which cannot be granted by the Debts Recovery Tribunal or the Appellate Tribunal and no provision is prescribed under the Act to deal with such situations.

26. Section 14 is an enabling provision, by which, physical possession can be forcibly taken by the Secured Creditor. When a suit is filed for recovery of possession from a third party stranger, the Court is not granting



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any order preventing any authority from taking any action in exercise of its powers conferred under the Act. Therefore, the argument is wholly misconceived. There is no substance in the argument. The learned Single Judge elaborately considered this aspect and held that the suit is not barred under Section 34 of the SARFAESI Act. This Court has no reason to take a different view and is not impressed by any of the submissions made by the learned counsels for the appellants. ***Therefore, Issue No.(1) is answered against the appellants.***

Issue No.(3) :

27. Very interestingly, the 1st defendant has given some additional particulars which are also relied upon by the plaintiff/1st respondent. The 2nd defendant alienated the suit property in favour of the 3rd defendant during the subsistence of mortgage after the issuance of notice under Section 13(2) of SARFAESI Act. It was the 3rd defendant, as purchaser pending proceedings, initiated various proceedings upto Hon'ble Supreme Court. It is true that, during pendency of Special Leave Petition before the Hon'ble Supreme Court, a sum of Rs.1.71 Crores was deposited with the 1st



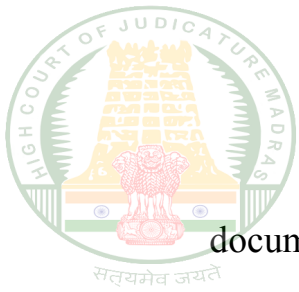
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defendant Bank. However, the 1st defendant Bank filed an affidavit before the Hon'ble Supreme Court regarding the deposit made with the Bank instead of depositing with the Registry. Later, the Hon'ble Supreme Court dismissed the Special Leave Petition after holding that there is no merit. A direction was also issued to the 1st defendant Bank to return the said amount to the 3rd defendant. The 1st defendant Bank was unable to touch the money to refund the money to the 3rd defendant, as the said amount was attached by the Government of India, Ministry of Finance, Enforcement Directorate, on the allegation that the 3rd defendant got the money in an illegal manner from Hong Kong, which resulted in action being initiated under the Prevention of Money Laundering Act. It is to be seen that, subsequently, the 1st defendant Bank was forced to file a writ petition challenging the attachment, citing the Enforcement Directorate and the 3rd defendant as respondents. However, the attachment was held to be valid while dismissing the writ petition. Even the amount of Rs.1.71 Crores is not available for the Bank. In all probabilities, the 3rd defendant has used the ill-gotten money for purchasing the property.



WEB COPY 28.It is also pertinent to mention that the defendants 5 and 6, the appellants in O.S.A.Nos.25 of 2020, have purchased the property when another mortgage in respect of other 50% of the property was subsisting. The 3rd defendant appears to have created another mortgage to borrow a sum of Rs.2,30,00,000/-. Therefore, the entire sale consideration was directed to be deposited to settle the mortgage. Even in the sale deed, there is no reference to the mortgage of property with the 1st defendant. This Court is unable to appreciate the *bona fides* of any one of the purchasers, either the 3rd defendant or the defendants 5 and 6, having regard to the peculiar circumstances and the time line.

29.No doubt, it is true that the 3rd defendant had an opportunity to discharge the mortgage at the time when the sale was not confirmed. He could have certainly availed the benefit under Section 13(8) of SARFAESI Act. It is to be seen that the auction sale in favour of the plaintiff is dated 24.03.2007. In the auction conducted on 24.03.2007, the plaintiff became the successful bidder and deposited 25% of the bid amount as per the



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document marked as Ex.P9. However, the confirmation of sale was delayed on account of the pendency of SARFAESI Application No.97 of 2007.

Though the Debts Recovery Tribunal-II, Chennai, passed an order on 12.03.2007 directing the Bank to defer the sale on condition to deposit the entire principal due along with interest within a period of three weeks from 24.03.2007, the said order was also under challenge at the instance of 3rd defendant before the Debts Recovery Appellate Tribunal and the Appellate Tribunal passed a conditional order again on 22.03.2007, granting interim stay to proceed with the auction on condition to deposit a sum of Rs.35,00,000/-. However, this Court, by order dated 21.07.2007 in C.R.P.No.839 of 2007, struck off the proceedings in SARFAESI Application No.97 of 2007 on the file of the Debts Recovery Tribunal-II, Chennai. The Hon'ble Supreme Court has confirmed the order of this Court in C.R.P.No.839 of 2007 by order dated 07.12.2007. Therefore, the confirmation of sale was delayed only on account of the pendency of the proceedings initiated by the 3rd defendant. The 2nd defendant never paid any money. Even though the 2nd defendant has sold the property in 2005 after symbolic possession was taken by the 1st defendant Bank, no amount was



deposited towards discharge of mortgage out of the sale consideration.

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Therefore, the contention of the 2nd defendant before this Court at this length of time taking advantage of the proceedings at the instance of the 3rd defendant to delay confirmation of sale, cannot be given any credence in equity. The law is settled even before amendment to the effect that the borrower cannot avail the benefit of Section 13(8) of SARFAESI Act once sale is confirmed. The sale was confirmed in favour of the plaintiff on 11.01.2008, immediately after the dismissal of Special Leave Petition by Hon'ble Supreme Court and the Sale Certificate was issued on 31.01.2008. At the risk of repetition, this Court has no hesitation to hold that either the 3rd defendant or the subsequent purchasers cannot take advantage of this delay on account of challenge to the sale and interim orders to contend that the amount deposited pursuant to the direction of the Hon'ble Supreme Court should be taken into consideration to declare that the mortgage itself is discharged.

30.As far as the plaintiff/auction purchaser is concerned, it is not as if he does not have any right. The plaintiff, whose bid was accepted and had

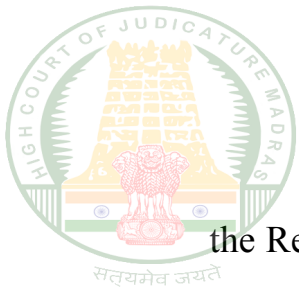


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paid 25% of the auction amount as per the terms and conditions of the

auction, has a legitimate expectation to get the sale confirmed in his favour.

But he could not get it done due to the intervention of the 3rd defendant by getting orders. The conduct of the 3rd defendant is relevant. Even though a conditional order was passed while granting stay by the Debts Recovery Tribunal-II, Chennai, on 12.03.2007, the 3rd defendant did not deposit any amount. However, he filed an Appeal before the Debts Recovery Appellate Tribunal, Chennai, and the Appellate Tribunal stayed the whole proceedings, however subject to condition that the 3rd defendant should deposit a sum of Rs.35,00,000/- with the respondent Bank. It is pertinent to mention that the 3rd defendant did not pay any money pursuant to the conditional order. However, as admitted by the parties, even in the Civil Revision Petition filed by the 1st defendant, there was an interim stay staying the confirmation of sale until further orders. Though the Civil Revision Petition was allowed by order dated 21.07.2007 by this Court, a Special Leave Petition was filed and the Hon'ble Supreme Court, by order dated 06.08.2007, after holding that there is no merit in the petition, gave an opportunity to the 3rd defendant to deposit the entire amount and debt before



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the Registry of Supreme Court within four weeks. This order is probably to

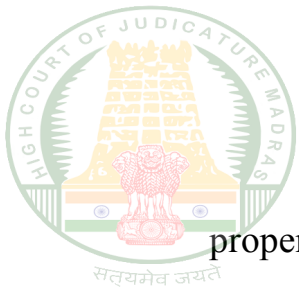
find out whether the plaintiff and 1st defendant would agree for any terms.

It is, therefore, when the matter was heard on 17.09.2007, the Hon'ble Supreme Court directed the Bank to file counter and directed the 3rd defendant to implead the highest bidder, the plaintiff herein, as party respondent to the Special Leave Petition. This Court is unable to see from the cause title whether the plaintiff was impleaded as party before the Hon'ble Supreme Court. Probably, after the hearing the 1st defendant Bank and the plaintiff, the Hon'ble Supreme Court dismissed the Special Leave Petition by order dated 07.12.2007. This order has become final. But for the pendency of proceedings before Hon'ble Supreme Court and the interim order by this Court in the Civil Revision Petition, the sale could have been confirmed in favour of plaintiff in March, 2007. Therefore, the plaintiff, who has paid the entire sale consideration, is made to wait from 2008 to get possession from strangers who have purchased the property after the dismissal of Special Leave Petition preferred by the 3rd defendant by Hon'ble Supreme Court. Admittedly, during the pendency of SARFAESI proceedings, despite conditional stay was granted, no amount was paid.



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Again, there was stay of confirmation of sale when Civil Revision Petition was pending. Once the Civil Revision Petition in C.R.P.No.839 of 2007 filed by the Bank to strike down the proceedings in S.A.No.97 of 2007 for want of jurisdiction is allowed and the order is confirmed by Hon'ble Supreme Court, no deposit pursuant to the direction of Supreme Court by 3rd defendant can be considered as a valid tender for redemption. After the confirmation of sale as on date, in a litigation of this nature, the litigants, who have not shown their *bona fides* in the previous litigation, cannot take advantage of the delay in proceedings to deprive the legitimate right of an individual who is caught in the middle. Therefore, the contention of the learned counsels appearing for the appellants that the mortgage itself shall be deemed to be discharged by virtue of payment made by 3rd defendant pursuant to the directions of Hon'ble Supreme Court, has no merit. As pointed out by the learned counsels appearing for the 1st defendant and the plaintiff, even the amount that was deposited was later attached by proceedings initiated against the 3rd defendant under Prevention of Money Laundering Act. Therefore, absolutely, there is no justification for the defendants to resist the plaintiff from taking physical possession of the suit



property. ***Accordingly, Issue No.(3) is answered against the appellants.***

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Issue No.(2) :

31.It is an unfortunate case where the plaintiff, who had deposited 25% of the amount in compliance with the terms and conditions of the sale and paid the entire balance upon confirmation of sale, is unable to get possession of the property. In the sale certificate issued by the 1st defendant in favour of plaintiff, it is specifically mentioned that possession is handed over to the plaintiff. However, the 1st defendant admitted that “possession” referred to in the document is “symbolic possession”. The plaintiff is now forced to file a suit to recover possession of the property. The question whether the plaintiff was paid interest for the 25% of the amount and whether the plaintiff is entitled to interest on such amount, is a matter between the plaintiff and the 1st defendant Bank. Assuming for a moment that the 2nd defendant, as mortgagor, is entitled to canvass this aspect, it will not vitiate the sale in favour of the plaintiff. At best, liberty can be preserved to the 1st defendant to canvas this point in case steps are taken to recover any balance, if required, from the 3rd defendant. This Court



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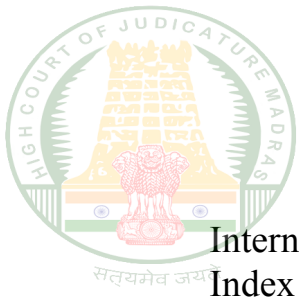
preserves the right of the 2nd defendant to ensure that the entire amount payable by the plaintiff as an auction purchaser is accounted and made available and credited to the 2nd defendant's loan account, as per the terms and conditions of the sale. ***Accordingly, Issue No.(2) is answered against the appellants.***

32.In view of the conclusions reached, we find no merit in the Appeals preferred by the 2nd defendant, as well the defendants 5 and 6, the subsequent purchasers. The judgment and decree of the learned Single Judge in C.S.No.1134 of 2008, dated 04.10.2019, is upheld and confirmed in all respects.

33.As a result, these Original Side Appeals are dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (P.D.B., J.)
21.03.2025

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O.S.A.Nos.22 & 25 of 2020

Internet : Yes

Index : Yes

Neutral Citation : Yes

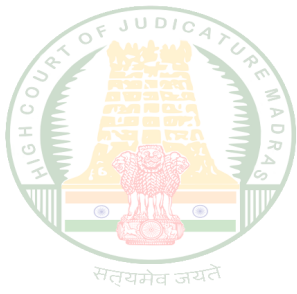
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Note to Registry : Issue order copy by 01.04.2025

S.S. SUNDAR, J.
and
P. DHANABAL, J.

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Judgment in
O.S.A.Nos.22 & 25 of 2020



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21.03.2025

O.S.A.Nos.22 & 25 of 2020

S.S. SUNDAR, J.
and
P. DHANABAL, J.

[Order of the Court was made by **S.S. SUNDAR, J.**]

Today, the matter is listed under the caption “for being mentioned”.

2.It is mentioned by Mr.F.B.Benjamin George, learned counsel for the 2nd respondent, that though his name is printed in the judgment dated 21.03.2025 in O.S.A.Nos.22 and 25 of 2020, there is a reference “no appearance” as against his name. He pointed out that he argued for the 2nd respondent and therefore, it is by mistake.

3.There is no objection from the other side. The arguments made by the learned counsel for the 2nd respondent have also been considered in the



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judgment. Therefore, Registry is directed to delete the reference “No appearance” for R2 in the judgment, dated 21.03.2025, in both the Appeals O.S.A.Nos.22 and 25 of 2020, and issue fresh copy of the order to the parties concerned.

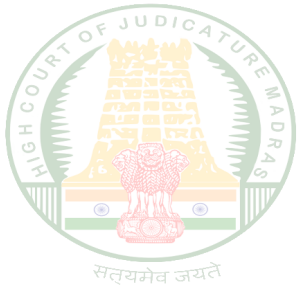
(S.S.S.R., J.) (P.D.B., J.)
29.04.2025

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S.S. SUNDAR, J.
and
P. DHANABAL, J.

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29.04.2025