



WEB COPY

A No. 4387 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/1/2026

C O R A M

THE HON'BLE Mr.Justice P.DHANABAL

Application No.4387 of 2025

K. Venkatesan
S/o Kuppulingam
No.11/24, 11th Floor, MIG-I, TNHB
Anna road, KK.Nagar
Chennai 600 078.

...

Applicant

Vs

1. R.K.Ganesan
No.5/613 – B 6 AGS Bhavan
Housing Board, Krishna Nagar
Kovilpatti 628 513.
2. K. Suresh Babu
S/o.M.Kothandam
No.13/5 Krishna Doss Road
III Street, Mangalapuram
Chennai 600 012.
Also at New No.6, Old No.17 Park Street
Kilpauk Garden Road, Kilpauk
Chennai 600 010.
3. Lavisha
D/o. D. Suriyakani
No.4/11 Mint Street
Chennai 600 079
4. D. Suriyakani
S/o. Dhanraj
No.4/11 Mint Street
Chennai 600 079.



5. Lalith Kumar Chodiya
S/o Bhavani Dhass Chodiya
No.273, I Floor, Symdanhamas Road
Chennai 600 112.
 6. TATA Capital Housing Finance Limited
One Forbes, Dr.V.B.Gandhi Marg Fort
Mumbai 400 001.
Also at Centennial Square, I floor
No.6 A, Dr.Ambedkar Salai
Kodambakkam
Chennai 600 024.
 7. K. Bharanidharan
S/o.B.S.Kannan
A 4, 8 B Olympia Garden Apts
GST Road, Pallavaram
Chennai 600 043.
 8. Repatriates Cooperative Finance
Development Bank Limited
No.33 North Usman Road
Chennai 600 017.
- ... Respondents

Application filed under Order XIV Rule 8 of Original Side Rules r/w.

Order VII Rule 11 (a) (d) of CPC to reject the plaint in C.S.No.104 of 2024.

For applicant ... Mr.V.G.Anbarasu

For respondents ... Mr.J.Kamaraj
for R.1
Mr.M.Madhu Prakash
for R.R.2 and 7.
M/s. P. Arul Gnana Prakash
for R.6
Mr.M.Vijayakumar
for R.8
R.R.3 to 5
- set ex parte



ORDER

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This application has been filed by the applicant/first defendant to reject the plaint in C.S.No.104 of 2004.

2. The facts in a nutshell are as follows:-

According to the applicant, he is the first defendant in the suit in C.S.No.104 of 2024 and the suit is filed for the following reliefs:-

(i). to direct the defendants 1 and 2 jointly and severally to pay a sum of Rs.2,90,00,000/- with interest at 12% from the date of plaint till realization

(ii). To create a lien/charge over the property, viz., the land house and premises bearing Plot No.8 – part, old Door No.16, Present Door No.168, Rangarajapuram Main Road, Kodambakkam, Chennai and the land in all measuring 1731 $\frac{3}{4}$ sq. feet and comprised in Block No.39, Survey No.90 of Puliur Village, Egmore – Nungambakkam Taluk, Chennai District more fully described in the Schedule A hereunder or **in an alternate**

direct the first respondent to re-convey the property viz, in the Registration District of Tindivanam in the Registration Sub-District of Vanur in Vanur Taluk, in Thiruchitrambalam Panhayat, Pattanur Revenue Village, in



Nalla Farm House, in Plot Nos.98 and 99, dry land comprised in Old Survey No.19/2-2.25 acres comprised in Resurvey No.73/3, at present subdivision 73/3A1A1A having extent of 14400 square feet and 2050 square feet RCC building Electricity connection No.02-435-016-727 Borewell, 1.5 H.P Motor more fully described in Schedule B property

(iii). To direct the defendants 1 and 2 to refund the sum of money advanced by the plaintiff in pursuance of the agreement dated 1/3/2018 after deducting the amount paid, if any

(iv). Permanent injunction to restrain the defendants, their men, agents, servants, plaint A and B schedule properties for sale either private or public or e-auction

(v). costs of the suit and

(vi). Any other reliefs

3. It is averred in the affidavit filed in support of the Application that Agreement of Sale was executed on 1/3/2018 stipulating that the alleged absolute sale deed shall be executed within 90 days from the date of agreement. Accordingly, “date fixed for performance” expired on 28/5/2018. Limitation



period prescribes a period of three years. The suit has been filed only on 5/3/2024 and the limitation period expired on 28/5/2021.

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3.1. Even on the alternate case of the plaintiff that an affidavit dated 5/10/2020, allegedly afforded a further period of four months to perform the contract and the latest date fixed becomes 5/2/2021 and hence, three years period was expired on 5/2/2024. Thus, the suit filed on 5/3/2024 is still beyond time by 29 days.

3.2. It is further averred in the affidavit that Section 34 of SARFAESI Act, expressly bars the jurisdiction of Civil Courts “in respect of any matter” which the DRT/DRAT is empowered to determine under the Act. The first respondent/plaintiff ought to have approached the Debt Recovery Tribunal under the SARFAESI Act, but without approaching the appropriate forum, filed the suit and therefore, in view of the bar under SARFAESI Act, this suit is barred by law.

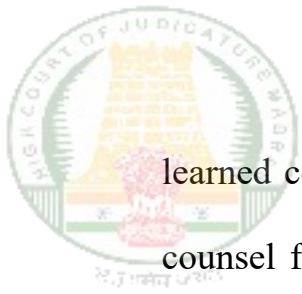
3.3. Even assuming that the plaintiff seeks to invoke a statutory purchaser’s charge under Section 55 (6) (b) of Transfer of Property Act, the plaint does not articulate the statutory elements. Therefore, on the above said ground, plaint is liable to be rejected and suit is liable to be rejected.



4. The first respondent/plaintiff has filed a counter stating that the plaintiff entered into an agreement on 1/3/2018 with defendants 1 and 2, after verifying the original parental deeds. Thereafter, respondents 1 and 2 evaded from executing the sale deed, thereby, criminal case has been registered. The first respondent also sought for the relief of refund of money as an alternate prayer. The time limit for recovery of money charge on immovable property is 12 years in respect of the advance money paid by the first respondent. Therefore, the suit is well maintainable and the question of law will be decided only at the time of trial.

4.1. The sixth defendant colluding with the applicant created an equitable mortgage even without pursuing the original parent title deeds. In fact the parental deeds were already handed over to the plaintiff by the defendants 1 and 2 and the same has been filed as plaint documents. Since fraud has been played by the parties, there is no bar under Section 34 of SARFAESI Act to proceed with this case. As far as cause of action is concerned, it is only a bundle of facts. If any of the fact discloses the cause of action, it is sufficient to institute the suit. Therefore, the instant Application is not maintainable either on law or on facts and liable to be dismissed.

5. Heard Mr.V.G.Anbarasu, learned counsel for the applicant, Mr.J.Kamaraj, learned counsel for the first respondent, Mr.M.Madhu Prakash,



learned counsel for the respondents 2 and 7, Mr.P.Arul Guna Prakash, learned counsel for the sixth respondent and Mr.M.Vijayakumar, learned counsel for the eighth respondent.

6. Learned counsel appearing for the applicant would submit that as per Section 34 of the SARFAESI Act, 2002, the Civil suit is barred by law. Once the secured assets have been sold in accordance with SARFAESI provisions and the sale has attained finality, no cause of action survives against the aggrieved. 'A' schedule property was sold as early as on 13.11.2017 and the B schedule property was sold as early as 19/2/2024 and therefore, the properties are not available for conveyance as on date. Even on subsequent events, prayer sought for by the first respondent is not maintainable.

7. The learned counsel appearing for the first respondent/plaintiff would submit that the defendants 1 and 2 in the main suit have entered into an agreement with the first respondent/plaintiff for sale of property. The mortgage created between the applicant and the sixth respondent without obtaining the original parental title deeds create suspicion that the mortgage might be created to defraud the plaintiff. Moreover, the applicant failed to convey part of A schedule property and therefore, prayer to reconvey is maintainable. The sale deed in respect of B schedule property is only subsequent to the sale agreement dated 1/3/2018. The dispute with respect to consideration requires enquiry,



which will be decided only at the time of trial. Since the applicant failed to fulfil the contract of agreement which is prior to the sale of schedule B property, suit is always maintainable.

8. Heard both sides and Perused the materials available on record.

9. The suit is filed for refund of money received through the admitted agreement dated 1/8/2018 and for reconveyance. According to the plaintiff, the sixth defendant in collusion with applicant created an equitable mortgage in the absence of original parent title deeds, which had already been handed over by the defendants 1 and 2 and the same has been filed as plaint documents in the suit. This application is filed by the 1st defendant to reject the plaint on the ground of no cause of action and barred by law. As far as the cause of action is concerned in the plaint the plaintiff has pleaded the cause of action and once cause of action is pleaded it can be tested through trial whether it is true or not. Hence it is a matter of trial. After the pleadings are completed, as a last resort, the applicant filed this application.

10. As far as barred by law is concerned according to the plaintiff, he pleaded about the fraud. Once the fraud is pleaded then it should be tested through trial, and the Civil Suit is maintainable. Therefore Section 34 of the SARFAESI Act is not at all a bar when the plaint discloses the fraud. In such a



view of the matter, Section 34 is not a bar to proceed with the case and it requires trial. Since the prayer for return of advance amount is prayed in the plaint, as the limitation is mixed with question of facts, the same can be decided at the time of trial. It is well settled law that even a single prayer is maintainable the suit is maintainable when the other prayers are not maintainable. Further, there cannot be a partial rejection of the plaint.

11. It is also admitted fact that already pleadings were completed and the case is ready for trial, therefore the grounds raised by the applicant are deserve to be taken in the written statement. Therefore, applicant can establish his defence in the suit by way of trial. In view of the above discussions, this Court is of the opinion that this application has no merits and deserves to be dismissed.

12. In the result, this **Application is dismissed.**

21st January, 2026

mvs/jai

Index: Yes: Yes/No

Neutral Citation: Yes/No



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