



W.P.(MD)No.3092 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.01.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**W.P(MD)No.3092 of 2017
and
W.M.P.(MD)Nos.2460 and 2461 of 2017**

1.G.Raju (Died)

2.Saraswathy

3.R.Prabhu

4.R.Vijayaragavan

5.R.Saratha Devi

6.R.Muralitharan

... Petitioners

(P2 to P6 are suo motu impleaded vide order dated 20.01.2026 in W.P.(MD)No.3092 of 2017 by GRSJ & RKMJ).

Vs.

1.The Debts Recovery Appellate Tribunal,
By its Registrar,
Ethiraj Salai, Chennai-08.

2.The Debts Recovery Tribunal,
3 & 4th Floors, Kalyani Tower
4/162, Madurai- Melur Road
Uthangudi, Madurai- 625107.



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3.Canara Bank,
Through its Regional Manager,
10-B/1, Trivandrum Road
Tirunelveli.

4.Canara Bank
Through its Branch Manager,
Sivakasi.

5.G.G.R.Premkumar (Died)

6.Mariappan

7.Anitha

8.Ajay

9.Andrew,
Rep.by his mother and natural guardian,
Anitha. ... Respondents

*(R7 to R9 are suo motu impleaded vide order
dated 20.01.2026 in WP(MD)No.3092 of 2017
by GRSJ and RKMJ)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the order dated 18.01.2017 made in RA(SA) 23 of 2011 on the file of the Debts Recovery Appellate Tribunal, Chennai, the 1st respondent herein confirming the order dated 29.02.2008 made in S.A.142 of 2007 on the file of the Debts Recovery Tribunal, Madurai, the 2nd respondent herein and quash the same.



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For Petitioners : Mr.A.V.Arun

For Respondents : Mr.Lakshmi Gopinathan,
For M/s.Polex Legal Solutions for R6
No appearance for R3, R4 & R7 to R9

ORDER
(By G.R.SWAMINATHAN, J.)

Heard the learned counsel for the writ petitioners and the learned counsel for the contesting respondent.

2.The petition mentioned property was purchased by one R.Gopalakrishnan in the year 1982. He sold the said property in favour of the deceased fifth respondent herein (G.G.R.Premkumar) in the year 1989. Premkumar mortgaged the said property with Canara Bank, Sivakasi Branch in the year 1996 and availed loan. The loan account was not serviced properly and it was classified as a non performing asset. The bank appears to have filed a suit for foreclosing the mortgage. Preliminary decree was passed on 07.04.1999 and the final decree was passed on 24.04.2006. In the meanwhile, SARFAESI Act was brought into force and instead of filing execution petition, the bank invoked its



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power under Section 13 of the SARFAESI Act. The property was brought to sale in the year 2007. The sixth respondent herein namely, Mariappan purchased the property in the auction sale held on 21.11.2007. However, actual possession could not be handed over to the auction purchaser on account of the litigation instituted by the deceased writ petitioner (G.Raju, S/o.Gopalakrishnan). G.Raju filed O.S.No.25 of 2004 seeking the relief of partition. Premkumar who is none other than the plaintiff's nephew was shown as the third defendant. Preliminary decree was passed and final decree was also passed on 25.06.2012 in I.A.No.441 of 2010.

3.Armed with this final decree and taking a stand that Gopalakrishnan purchased the petition mentioned property only from the joint family funds, the deceased writ petitioner filed S.A.No.142 of 2007 before the Debts Recovery Tribunal, Madurai. The SARFAESI appeal was dismissed on 29.02.2008. Challenging the same, appeal was filed before the Debts Recovery Appellate Tribunal, Chennai. It was also dismissed on 18.01.2017. Questioning the same, this writ petition came to be filed.



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4.The learned counsel for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petition. His pointed contention is that the nature and character of the property could be determined only by the jurisdictional Civil Court and not by the Debts Recovery Tribunal. He pointed out that the Civil Court had already passed a final decree in the partition suit instituted by the deceased writ petitioner. It has been held that the borrower / fifth respondent (Premkumar) had only a share in the property and he did not have title or right over the entire property which was mortgaged in favour of Canara Bank, Sivakasi Branch.

5.We do endorse the stand of the learned counsel for the petitioners that the jurisdictional Civil Court alone can decide such issues. But then, in such a suit, the bank was obviously a necessary party. This is all the more so because the suit itself was instituted only in the year 2004. It is seen that even before that, the recovery suit filed by the bank had already been decreed on 07.04.1999 itself. Failure to implead the bank was fatal to the very maintainability of the suit. A decree obtained behind the back



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of the lender institution, obviously cannot bind the bank. We, therefore, hold that the Debts Recovery Appellate Tribunal as well as the Debit Recovery Tribunal rightly declined to grant relief to the writ petitioner. Interference with the impugned orders is not called for and the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S. J.) & (R.K.M. J.)
21.01.2026

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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