IN THE COURT OF THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, VELLORE, VELLORE DISTRICT.

PRESENT: P.V.Sandilyan,
Additional District Judge (FTC),
Vellore.

Dated this the 28th day of October 2025, Tuesday

I.A.No.2 of 2022
in
O.S. No.144/2021

State Bank of India, Vellore,
Rep.by its Asst. General Manager . . . Petitioner/3rd defendant

-Vs-

1. S.Deepa
2. S.Chandrika
3. S.Seenivasan
4. K.S.Sivakumar
5. K.Natarajan . . . Respondents/Plaintiffs

This petition is came up before me for final hearing on 23.10.2025 in the presence of Thiru.K.M.Boopathi, Counsel for the Petitioner/3rd Defendant, Thiru.P.Muniappan, Counsel for the Respondents/Plaintiffs 1 and 2 and the Respondents/Plaintiffs 3 to 4 were called absent, set exparte and upon hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration, till this date this court delivered the following:-

ORDER

This petition has filed by the petitioner under Order 7 Rule 11 CPC to reject the plaint.

2. <u>The brief petition averments of the petition filed by the petitioner/3rd defendant :</u>

2.1 The petitioner is the petitioner and 3rd defendant in the above suit, submits that the suit is not maintainable in law. It is stated that the loan account involved in the case has been classfied as a Non-performing Asset and transferred to the Stressed Assets Management Branch for recovery and resolution. The petitioner contends that the suit is liable to be rejected on grounds of lack of territorial jurisdiction, improper court fees, and limitation. It is further submitted that the matter falls within the exclusive purview of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, and Section 34 of the SARFAESI Act, 2002, which bar the jurisdiction of civil courts in such matters. Relying on precedents of the High Court and Supreme Court, the petitioner asserts that when effective statutory remedies exist under special fiscal laws, civil courts cannot assume jurisdiction, and statutory procedures must be followed without deviation.

2.2 The petitioner/3rd defendant submits that under Section 13 of the SARFAESI Act, a secured creditor has the statutory right to enforce its security interest without intervention of a civil court or tribunal. If the borrower or guarantor has any grievance, their remedy lies only under Sections 17 and 18 of the SARFAESI Act, before the Debt Recovery Tribunal or Appellate Tribunal. Similarly, under Section 19 of the RDDB & FI Act, the bank can recover its dues, and borrowers or third parties may file counterclaims only before the DRT. The petitioner further submits that the Apex Court has consistently held that tribunals under the RDDB & FI Act were established to provide speedy and specialized adjudication of disputes between banks, borrowers, and third parties, guided by fairness and natural justice rather than the CPC. Hence, respondents 1 and 2, if aggrieved, can raise their claims only before the DRT, making the present civil suit unsustainable in law.

2.3 The petitioners point out that the respondents had even acknowledged the ownership of the mortgagor, Mr.K.S.Sivakumar (4th respondent/2nd defendant), as shown by their participation in the e-auction held on 03.05.2021. It is further stated that the petitioner's father, Mr.Seenivasan (3rd respondent), had absolutely conveyed the suit property to the 4th respondent on 14.07.2006 through registered sale deeds (Doc.Nos.3960 & 3961 of 2006, SRO Gudiyatham), who subsequently mortgaged it as collateral security to secure business loans amounting to Rs.23.50 crores for M/s.Higrade shoes and M/s.Higrade Designs. The bank asserts that the 4th respondent has held a clear and indefeasible title to the property since 2006, while the petitioners, despite full knowledge of these transactions, remained silent for over 15 years before filing the present suit on 24.09.2021 for partition rendering the claim hopelessly barred by limitation.

2.4 The petitioner bank had already initiated SARFAESI proceedings, and the suit property was sold in e-auction on 03.05.2021. Mr.N.Nataraj was declared the successful bidder for Rs.1,75,50,000/- and the sale proceeds were credited to the loan account. The bank filed an application under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate, Vellore for taking physical possession of the property. The court allowed the application, and possession was taken with police assistance and handed over to the auction purchaser. The suit is also defective for insufficient court fees and not in conformity with the Tamil Nadu Court Fees and Valuation Act, 1956. The petitioner bank prays for rejection of the plaint as the Civil court lacks jurisdiction under Section 34 of the SARFAESI Act and section 18 of the RDDB & FI Act, and for dismissal of the suit with costs.

3. The brief averments of the Counter filed on behalf of the respondents/plaintiffs are as follows :

The respondents/plaintiffs contend that the petition filed by the petitioner is vague, baseless, and legally untenable. They argue that the petitioner's claim that the suit is barred under Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and Section 34 of the SARFAESI Act, 2002 is misconceived, as those statutes apply only to financial institutions and do not affect the rights of the plaintiff arising under the Hindu Succession Act. The respondents further state that the citations relied upon by the petitioner relate to bank credit and debt matters, which are irrelevant to the present property dispute. They assert that the allegations in the affidavit are vague, general, and vexatious made only to delay the proceedings. The suit, they emphasize, is already ripe for trial, and the petitioners are filing frivolous applications to drag on the case. The respondents therefore prays that the petition be dismissed with compensatory costs.

4. There is no oral and documentary evidence on both sides.

5. The point for consideration in this petition is, **whether this petition is to be allowed?**

6. Point:

Both side arguments heard. Records perused.

6.1 The learned petitioner counsel would contend that the suit is liable to be rejected on the ground of territorial jurisdiction, for want of Court fees and limitation, also suit is hit by the provision of Section 18 of Recovery of Debts Due to Banks and Financial Institutions Act 1993 and Section 34 of SARFEASI Act 2002. Section 13 SARFAESI act enable the Borrower / guarantor to raise their grievance under section 17 and 18 of the SARFAESI act. Debt Recovery Tribunal is competent to adjudicate issues between Bank and borrower and any third parties having any interest and respondents 1 and 2 can raise all points before DRT. Further contended that suit is not maintainable and cited various citations of Hon'ble Apex Court and Hon'ble High Court in the petition. Further stated that respondents 1 and 2 are fully aware of the mortgage, e-auction precedings and kept silent for more than 15 years now knocked the doors of this court only on 24.09.2021 for the relief of purported partition hence the suit is barred by limitation. The petitioner filed an application under section 14 of the SARFEASI Act before the Chief Judicial Magistrate Vellore for physical possession of the suit property and the petition was allowed on 23.07.2012 property was taken possession , auction purchaser put into possession and enjoyment of the suit property. The respondents 1 and 2 are not in possession and the court fee paid is not in consonance with the provisions of the Tamil Nadu Court Fees and Suits Valuation Act so suit is liable to be rejected, in support of his contention, the learned counsel submitted Hon'ble Madras High Court citation reported in **2014 (4) L.W. 559 M/s.Kotak Mahindra Bank Ltd., represented by its Authorized Officer -Vs- Dr.K.Priyalatha** and Hon'ble Supreme Court citation reported in **2014 (1) CTC 652 Jagadish Singh Vs. Heeralal and others**.

6.2 The learned counsel for the respondents stated that the suit is hit by 18 of Debt Recovery Act and Section 34 of SARFEASI Act is untenable and it will not applicable to Hindu Succession Act. Further contended that the allegations in petitioner's affidavit are vague and irrelevant and the suit is well within the limitation, if court fee found to be deficiency, then ready pay appropriate court fee, if ordered and prayed to dismiss the petition.

6.3 The **Order VII Rule 11 CPC, Rejection of plaint reads as follows:-**

The plaint shall be rejected in the following cases.

(a) where it **does not disclose** a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon proper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to **be barred by any law;**

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9.

Provided that the time fixed by the Court for the correction of the valuation of supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

6.4 In order to consider Order VII, Rule 11 the court has to scrutinize the averments in the plaint, the pleas taken by the respondent either in the petition or in written statement are wholly irrelevant and the matter is to be decided only in the plaint averments. It is not required to take into consider the defence set up by the defendant in his petition. The question whether the plaint discloses any cause of action and whether it is barred by the any law is to be decided by looking at the averments contained in the plaint and not the defence set up by the Petitioner in the petition. The probable defence cannot be looked into the stage of rejection of plaint.

6.5 The respondents filed the suit for the following prayers:

1. Dividing the suit properties into three equal parts and allot two such shares to the plaintiffs by taking into consideration of good and bad soil on equity, moiety and if the defendants fail to do so;
2. Appointing a Commissioner to divide the suit properties as per the preliminary decree and obtain a report and pass a final decree accordingly;
3. Put the plaintiffs into actual possession of such shares by process of law;
4. Direct the defendants to pay the costs of the suit to the plaintiffs.

6.6 On perusal of the plaint, it reveals that the suit property was inherited by the paternal grandfather of the respondents 1 and 2 after his demise, the paternal grandfather's 4 sons had divided the joint family properties among themselves in 1980 and the suit property fell to the share of the plaintiffs' father Srinivasan, the 1st defendant/3rd respondent. The respondents 1 and 2 contended that the suit property is a Hindu joint family property, they are entitled 2/3rd share in the suit property under Hindu Succession Act for the reason they are co-parceners.

6.7 The respondents 1 and 2 in their plaint para-4 alleged that the 3rd respondent has executed two nominal sale deeds to the 4th respondent Sivakumar and the 4th respondent mortgaged the property for Rs.1,60,00,000/- for a short period of purchase, however 4th respondent purchased the property from the 3rd respondent for Rs.12,99,000/- and mortgaged the property to the petitioners' bank for a higher value as stated supra. Further, the respondents 1 and 2 contended that the 3rd respondent purposely defaulted and the petitioners sold the property to the 5th respondent, overall the respondents 1 and 2 contended all entire transactions are bogus transactions in order to defeat the legal right of the plaintiff, their right to inheritance of the suit property cannot be obstructed by the act of 3rd respondent and the petitioners.

6.8 The learned counsel relied the citation of the Hon'ble Apex Court reported in **2014(1) CTC 652, Jagadish Singh -Vs- Heeralal and others** held that

> "Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) [SARFAESI Act], Sections 34, 2(ze), 2 (zc) & 2(zd) - Code of Civil Procedure, 1908 (5 of 1908), Section 9 - Judisdiction of Civil Courts - Maintainability of Civil Suits - Ouster of Civil Court jurisdiction - Civil Suit challenging recovery action initiated by Banks - Act ousts Civil Court jurisdiction in respect of Recovery proceedings initiated under Act - Bank auctioned mortgaged property in pursuance of initiation of Recovery proceedings - Borrower challenged action of Bank before Debt Recovery Tribunal and same was dismissed - Joint Family members of borrower filed Civil Suit in respect of Secured Assets for partition and other relief - Contention of Joint Family members of borrower that they have right and interest in Secured Assets - No Civil Court shall have jurisdiction to entertain any Suit or proceedings "in respect of any matter" for which DRT or Appellate Tribunal is empowered to adjudicate under Act - Person claiming interest in Secured Assets has to approach DRT by filing Appeal under Act - Civil Suit challenging measures taken by Secured Creditor is barred under law."

6.9 The Hon'ble Apex Court has observed in the above Judgment that respondents 1 and 2 filed civil suit that they are being sons and grandsons of deceased Premji constituted a Hindu undivided family engaged in agriculture, the properties were purchased in the names of respondents 7 to 9 out of the funds of Hindu undivided family, house Nos.41/1, 42/3 and 42/2 were also purchased in the names of respondents Nos.6 to 8 respectively out of the funds of Hindu undivided family and therefore the properties of Hindu Undivided Family. Held that the above properties were purchased by respondents 6 to 8 in their individual names, long after the death of Premji and that too by registered sale deeds and no claim was ever made at any stage by any member of the Hindu undivided family that the suit land was a HUF property and not the individual property and decided civil suit challenging measures taken by the bank is barred under law.

6.10 But, as far as the present case on hand is concerned, the respondents 1 and 2 claimed that they are co-parceners, the suit property is a joint family property and entitled to 2/3rd share in the suit property under Hindu Succession Act. The petitioners contended that the remedy available for the respondents 1 and 2 before the Debt Recovery Tribunal under Section 18 cannot be countenanced for the reason, the remedy available under Sections 17 and 18 of SARFAESI Act is inadequate and it cannot be sought as a remedy at all, as no partition could be sought under SARFAESI proceedings by the co-parceners under Hindu Joint Family property.

6.11 Nowhere the petitioner bank denied in the rejection of plaint petition that they are not co-parcerners and they are not entitled to 2/3rd share. No dispute by the petitioners that it is a Hindu joint family property. The petitioners established prima facie that they are co-parceners and have a 2/3rd share in the suit property and they claim for partition fall outside the jurisdiction of the Debt Recovery Tribunal and cannot be adjudicated in SARFAESI proceedings. Whether the respondents 1 and 2 have any share in the capacity of co-parcenrs, these matters to be decided only at the time of final determination of the suit and cannot be decided threshold in this petition. Under SARFAESI proceedings, no relief of division of property by metes and bounds can be granted. For the plaint prayer 1 and 2, the only legal course open is the civil court and with regard to Section 34 of SARFAESI Act, 2002 and Section 18 of the Recovery of Debt and Bankruptcy Act, 1983 cannot be pressed into service. The civil court jurisdiction cannot be ousted for the prayer for partition. Even if the respondents 1 and 2 are not in possession of the suit property, based on the petitioner's contention that the suit property was handed over to the respondent No.5 Under Section 14 of SARFAESI Act, ordered by the Hon'ble Chief Judicial Magistrate, Vellore for the deficiency of court fee alone partially the plaint cannot be rejected as that would be against Order VII Rule 11 of C.P.C.

6.12 Despite filing counter by the respondents 1 and 2, they failed to argue the matter before this court. On perusal of plaint, the respondents 1 and 2 contended that they are being a co-parceners entitled to share in the property, without consent and knowledge, the property was sold by the 3rd respondent to the 4th respondent on 14.06.2006 for a sum of Rs.12,99,000/-, in turn the 4th respondent mortgaged the property to the petitioners' bank for a sum of

Rs.1,60,00,000/- on 07.11.2006, 12.12.2007 within a short period of his purchase and defaulted the property prima facie allegation of the respondents 1 and 2 as entire transaction as bogus trasnaction without their consent, without there being participation in sale, are all matters to be decided, in the final determination of the suit, no finding could be rendered in the rejection of plaint under Over VII Rule 11 C.P.C. This court is of the considered view, there are triable issues in the plaint and the suit cannot be rejected at the threshold by entertaining this petition under Order VII Rule 11 C.P.C., seeking rejection of plaint.

In the result, this petition is dismissed. No costs.

Dictated to Steno-typist directly, typed by her through computer, corrected and pronounced by me in open court, this the 28th day of October 2025.

P V SANDILYAN
Digitally signed by P V SANDILYAN
Date: 2025.10.28 18:04:09 +0530

Additional District Judge(FTC),
Vellore.

<u>Both side Witnesses and Exhibits</u>:-

- NIL -

P V SANDILYAN
Digitally signed by P V SANDILYAN
Date: 2025.10.28 18:04:19 +0530

Additional District Judge (FTC),
Vellore.