KAHS300006742022

Presented on : 05-11-2022
Registered on : 05-11-2022
Decided on : 16-01-2023
Duration : 0 year, 2 months, 11 days

IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C., ARAKALAGUD

PRESENT

SRI MUZAFFAR.A.MANJARI,
B.A., LL.B.
SENIOR CIVIL JUDGE & J.M.F.C.,
ARAKALAGUD

F.D.P.NO.18/2022

DATED THIS THE 16TH DAY OF JANUARY - 2023

PETITIONER:

The State Bank of India,
Hassan Branch,
Represented by its
Chief Manager.

(By Sri Kithoor Dharmappa, Adv.)

-Vs-

RESPONDENT:

K.B.Govindegowda S/o Late Bhanegowda,
Aged about 70 years,
R/o Kadavinahosahalli Village,

Konanuru Hobli, Arakalagud Taluk,
Hassan District.

(Ex-parte)

ORDERS

This petition is filed by petitioner-bank under Order XXXIV Rules 4 and 5 of C.P.C for drawing a final decree on the basis of a preliminary decree dated 08.03.2022 passed by this court in O.S.No.76/2021.

2. In the petition, the petitioner-bank has averred that this court has passed a preliminary decree in O.S.No.76/2021 on 08.03.2022 directing the respondent to pay a total sum of Rs.13,54,329/- with interest within 6 months from the date of decree on account of default committed by him in repayment of the loan amount. The respondent had mortgaged the following suit properties in favour of the petitioner-bank at the time of availing the said loan amount.

1) Sy.No.98/1 measuring 1 acre 8 guntas situated at Sheegodu Village, Konanuru Hobli, Arkalgudu Taluk, Hassan District.

2) Sy.No.98/2 measuring 38 guntas situated at Sheegodu Village, Konanuru Hobli, Arkalgudu Taluk, Hassan District.

3) Sy.No.98/3 measuring 13 guntas situated at Sheegodu Village, Konanuru Hobli, Arkalgudu Taluk, Hassan District.

4) Sy.No.161 measuring 4 acres 8 guntas situated at Sheegodu Village, Konanuru Hobli, Arkalgudu Taluk, Hassan District.

3. The petitioner has further stated that the respondent has not complied the preliminary decree passed against him by this court in O.S.No.76/2021 and has not paid the decreetal amount. Therefore, the petitioner-bank was constrained to file this petition and accordingly, it has prayed for allowing this petition and passing a final decree.

4. In spite of service of notice, the respondent failed to appear before the court and therefore, he has been placed ex-parte.

5. In order to prove the case of petitioner/bank, its Assistant Manager got examined herself as P.W.1 and got marked documents as per Ex.P1 and Ex.P2.

6. Heard arguments and perused the materials placed on record.

7. The following points arise for my consideration:

POINTS

1. Whether the petitioner-bank is entitled for final decree as prayed for?
2. What order?

8. My findings to the above points are as follows:-

POINT NO.1 : In the **AFFIRMATIVE**
POINT NO.2 : As per the final order for the following:

:: REASONS ::

9. **POINT NO.1:** In order to establish the case of petitioner-bank, its Assistant Manager has got examined herself as P.W.1 by filing her affidavit in lieu of examination-in-chief wherein, she reiterated the averments made in the petition. In addition, she got marked documents as per Ex.P1 and Ex.P2 in support of her testimony. Ex.P1 is certified copy of judgment and Ex.P2 is certified copy of decree passed by this court in O.S.No.76/2021.

10. P.W.1 has testified that the respondent had raised loan from the bank by mortgaging the above mentioned land but since he committed a default in repayment of the loan amount, the bank had filed O.S.No.76/2021 against him for recovery of the loan amount. The said suit has been decreed on 08.03.2022 whereby the respondent has been directed to pay a sum of Rs.13,54,329/- with future interest at 6% per annum on Rs.11,50,000/- within 6 months. However, the respondent has not paid the said decreetal amount till this date in compliance of the decree. As such, it is necessary to order for sale of the above mentioned mortgaged property in order to realize the

decreetal amount. Therefore, P.W.1 prayed for passing a final decree.

11. Perusal of Ex.P1 and Ex.P2 reveals that a preliminary decree is passed by this Court on 08.03.2022 in O.S.No.76/2021 and as per the decree, it is ordered that suit of the plaintiff/petitioner is decreed for a sum of Rs.13,54,329/- against the defendant/respondent with interest at the rate of 6% per annum on Rs.11,50,000/- from the date of the suit till the date of realization. It is further ordered and directed in the decree that the respondent shall pay the decreetal amount within 6 months from the date of the decree. It is also ordered that if the respondent failed to pay the decreetal amount, the petitioner-bank is at liberty to recover the same as per law by way of sale of the mortgaged properties in order to satisfy the decreetal amount.

12. Thus, the above documents marked as Ex.P1 and Ex.P2 support the case of the petitioner and testimony of P.W.1. This testimony of P.W.1 and documents at Ex.P1 and Ex.P2 have remained unchallenged and there is nothing to disbelieve the same. The respondent has neither appeared before the court nor filed his objections nor cross-examined P.W.1 nor entered into the witness box to rebut the evidence of petitioner-bank. The respondent has not adduced any evidence either to disprove or disbelieve the case of petitioner-bank. It is also not the case of

respondent that he has preferred an appeal against the preliminary decree and that no documents are produced in this regard. Therefore, I am of the considered opinion that the petitioner-bank is entitled for final decree on the basis of preliminary decree passed in O.S.No.76/2021 for realization of the decreetal amount by way of sale of the mortgaged properties. The petitioner is at liberty to satisfy the decreetal amount by sale of the mortgaged properties as per the provisions of Order XXXIV Rules 4 and 5 of C.P.C. Hence, for all these reasons, I answer point No.1 in the **AFFIRMATIVE.**

13. **POINT NO.2:** In view of the above discussion and finding given to point No.1, I proceed to pass the following :

:: ORDER ::

Petition filed by the petitioner-bank under Order XXXIV Rules 4 and 5 of C.P.C is hereby **ALLOWED** with costs.

It is ordered that the petitioner-bank is entitled for final decree as per preliminary decree dated 08.03.2022 passed in O.S.No.76/2021.

It is hereby ordered and decreed that the mortgaged properties mentioned in the aforesaid preliminary decree or a sufficient part thereof be sold, and that for the purpose of such sale, the petitioner-bank shall produce before this court or such officer as it appoints, all documents in its possession or power relating to the mortgaged properties.

And it is hereby further ordered and decreed that the money realized by such sale, be paid into the court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the petitioner-bank under the aforesaid preliminary decree and any further orders that may have been passed in the suit and in payment of any amount which the court may have adjusted due to the petitioner-bank for such costs of the suit including the costs of this application and such costs, charges and expenses as may be payable under Rule 10, together with such subsequent interest as may be payable under Rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance if any, shall be paid to the respondent or other persons entitled to receive the same.

(Dictated to stenographer directly on the computer, typed by him, order corrected & pronounced by me in open court on this 16th day of January - 2023).

(MUZAFFAR.A.MANJARI)
SENIOR CIVIL JUDGE & JMFC,
ARAKALAGUD

: A N N E X U R E :

LIST OF WITNESSES EXAMINED FOR THE PETITIONER:

P.W.1 : Smt.Supriya T.K.

LIST OF EXHIBITS MARKED FOR THE PETITIONER:

Ex.P1 : Certified copy of judgment in O.S. No.76/2021
Ex.P2 : Certified copy of decree in O.S.No.76/2021

LIST OF WITNESSES EXAMINED FOR THE RESPONDENT:

Nil

LIST OF EXHIBITS MARKED FOR THE RESPONDENT:

Nil

SENIOR CIVIL JUDGE & JMFC.,
ARAKALGUD.