

ORDERS ON IA NO. XIII

It an application filed by the Plaintiffs under Order 39 Rule 1 and 2 of Civil Procedure Code, to restrain the Defendant No.13 bank from putting the application schedule property for public auction to be held on 07-08-2015.

2. In the affidavit annexed to the application the Plaintiffs has stated that, they have filed a suit for Partition and separate possession of their share in the suit schedule property. The Defendant No.7 to 11 have filed a suit against Defendant No.1 in O.S. No. 683/2010 for which the Plaintiff is not a party and they have compromised the suit without the knowledge of the plaintiffs and on the basis of the compromise decree, they have mortgaged the suit schedule property in favour of Defendant No.13. Now, the Defendant No.13 has proceeded to recover the dues by invoking the provisions of Securitization Act 2002 and the auction was fixed on 7-08-2015, therefore it is just and proper to restrain the Defendant No.13 from putting the suit schedule property in public auction.

3. Defendant No.13 has filed objection to the said application and has denied the affidavit averments and has stated that the suit is not maintainable and Defendant No.13 has prayed to recover the dues from the Defendant No.1 by invoking Securitization Act. The Plaintiff has no right to challenge the same. Defendant No.13 has also stated that one Chandrashekar has also filed a Writ Petition in 3870/2014 against the Defendants and it is still pending. The Defendant No.13 has prayed to dismiss the application.

4. Heard arguments.

5. The points that arise for my consideration are:-

- 1) Whether Plaintiffs have made out any prima-facie ground to grant Temporary Injunction?
- 2) Whether balance of convenience lies in favour of the Plaintiffs?
- 3) Whether the Plaintiffs put to hardship if temporary injunction is not granted?
- 4) What order?

6. I have answered the above points are as follows:-

Point Nos.1 to 3 :- In the Negative

Point No.4 :- As per final order for the following:-

REASONS

7. Point Nos.1 to 3:- These issues are taken up together as they could be disposed off by a common reasoning and also to avoid repetition of facts.

It is an admitted fact that the Defendant No.13 has proceeded to auction the suit schedule property by invoking the provisions of Securitization and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 and it is also called as Securitization Act. It is the specific contention of the plaintiffs that after filing of the suit for partition, the Defendant No.7 to 11 have filed a suit against Defendant No.1, in O.S. No. 683/2010, for which the Plaintiff is not a party. Without the knowledge of the plaintiffs, they have entered into compromise. On the basis of the compromise decree, the loan was applied by the deceased Defendant No.1. It is pertinent to note that, the plaintiffs have filed a similar application in I.A. No.XI and that application came to be dismissed on 16-07-2014. Again the plaintiffs have filed an another application on I.A. No.XII to restrain the Defendant No.13 from alienating the suit schedule property. That application was also came to be dismissed. In the said order, my learned predecessor-in-office has clearly held that

the suit is not maintainable and Civil Court has no jurisdiction to grant the relief in view of the provisions of Securitization Act. It is the specific contention of the Defendant No.13 that, Civil Court not having jurisdiction. This court has consistently held that no jurisdiction to entertain this suit and the Defendant has not maintained this application before the Civil Court, in spite of that, Plaintiffs have filed this application once again for the similar relief. The plaintiffs have not chosen to prefer an appeal against the order passed on I.A. Nos. XI and XII or not chosen to approach the debt recovery tribunal under the provisions of Securitization Act. The issue regarding jurisdiction of the Civil Court to grant interim relief to restrain the Defendant No.13 from auctioning the suit schedule property under Securitization Act is finally heard and decided. The relief has claimed by the applicant in this application is hit by principles of resjudicata. It is contention of the learned counsel for the Plaintiffs that cause of action to file this application is different one, therefore application is not maintainable. But nature of the relief as sought by the Plaintiffs is one and the same and this court already held that civil court has no jurisdiction to grant interim relief, therefore the application filed by the Plaintiffs is not maintainable. The Plaintiffs have not made out any prima-facie ground to grant Temporary Injunction and balance of convenience not lies in favour of Plaintiffs. If temporary injunction is not granted, no irreparable loss caused to the

plaintiffs. Accordingly, I have answered above points in the negative.

8. Point No.4:- For the above said reasons and discussion, I proceed to pass the following:-

O R D E R

I.A. No. XIII is hereby dismissed on costs of Rs.500/-.

The following preliminary issue is framed regarding maintainability of the court.

1) Whether suit of the Plaintiffs is maintainable in view of the Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002?

**Judge,
Addl. Court of Small Causes,
Mysuru.**