

**TITLE SHEET FOR JUDGEMENTS IN SUIT
IN THE COURT OF THE JUDGE, ADDL. SMALL CAUSES AND
SENIOR CIVIL JUDGE, MYSURU.**

: PRESENT :

**Sri. M. K. ASHOK, B.A., LL.B.
Judge, Addl. Court of small causes, Mysuru.**

DATED THIS THE 8th DAY OF JANUARY 2016

O.S.No.188/2014

BETWEEN

- 1. V. Ramaraju, aged 50 years,**
- 2. V. Mohanraju, aged 48 years,**

Both are sons of late Venugopal Raju and both are residing at D.No.2210, 4th Cross, Basaveshwara Road, K.R. Mohalla, Mysore.

: PLAINTIFFS

(Represented by Sri. S.J. Lakshmegowda, Advocate)

-V/S-

- 1. Smt. Srilakshamma, Since dead by LRs, D/o Late Venugopal Raju,**
- 1) Smt. S. Nagamani, aged about 49 years, W/o Venkata Shivaraju, C/o. Rajashekar Raju, # 11, 3rd Main Road, New Taragpet, Bangalore-560 002.**
- 2) Smt. S. Hemalatha, aged about 46 years, W/o V. Mohan Raju, # 2210, 4th Cross,**

**Basaveshwara Road, K.R.
Mohalla, Mysore.**

**3) Sri. S. Arun Kumar, Aged about
41 years, S/o Late
Shantharaju, # 3, Block-20, 2nd
Stage, S.B.M. Colony,
Srirampura, Mysore.**

**2. Smt. Hemavathi, aged 46 years,
D/o Late Venugopal Raju.**

**1 and 2 are the residents of
D.No.147, BWEZ farm road,
Vidyaranyaapuram, Mysore.**

**3. Smt. Chandramma, aged 52
years, D/o Late Venugopal
Raju, R/at D.No.11, 3rd Main
road, N.T. Pet, Bangalore- 560
002.**

**4. Sri. K.N. Chandrashekar, aged
42 years, S/o T. Narayan,
Residing in a portion of
1063/26, 4th cross, 1st main,
Vidyaranyaapuram, Mysore.**

**5. Manjunath, aged 32 years, S/o
K. Ramu, Residing in a portion
of 1063/26, 4th cross, 1st main,
Vidyaranyaapuram, Mysore.**

**6. Madan Gopal Raje urs, aged 42
years, Residing in a portion of
1063/26, 4th cross, 1st main,
Vidyaranyaapuram, Mysore.**

**7. G. Lakshmi Narayana Raju,
aged 53 years, S/o Late
Nagarathnamma, D.No.85,
E.W.S. Kanakagiri, Sewage
Farm Road, Vidyaranyaapuram,
Mysore.**

**8. G. Devaraju, aged 51 years,
S/o Late Nagarathnamma,**

**D.No.1338, 6th cross,
Sharadadevi Nagar, Mysore.**

- 9. G. Sheshachalaraju, aged 48 years, S/o Late Nagarathnamma, D.No.85, E.W.S. Kanakagiri, Sewage Farm Road, Vidyaranyapuram, Mysore.**
- 10. G. Chandrashekar Raju, aged 48 years, S/o Late Nagarathnamma, D.No.85, E.W.S. Kanakagiri, Sewage Farm Road, Vidyaranyapuram, Mysore.**
- 11. Palakshmmamma, aged 35 years, D/o Late Nagarathnamma, D.No.85, E.W.S. Kanakagiri, Sewage Farm Road, Vidyaranyapuram, Mysore.**
- 12. K. Govindaraju, aged 81 years, S/o Late Kupparaju, # 85, EWS Kanakagiri, Sewage Farm Road, Vidyaranyapuram, Mysore.**
- 13. The Graduate Co-operative Bank, by its General Manager, Chamaraja Double Road, Mysore.**

: DEFENDANTS

(1st and 2nd LR of Defendant No.1 are represented by Sri. Ashokkumar B.S., Advocate, 3rd LR of Defendant No.1 is represented by Sri. S. Krishne Gowda, Advocate, Defendant Nos. 2 and 3 are represented by Sri. B.K. Nagaraja, Advocate, Defendant Nos. 4 and 5 are represented by Sri. B.H. Dharmendrakumar, Advocate, Defendant No.7 to 12 are represented by Sri. P.S. Chinnaiah Prakash, Advocate and Defendant No.13 is represented by Sri. N.G. Ramaswamy, Advocate)

: ORDERS ON PRELIMINARY ISSUES :

It is a suit for partition and separate possession.

2. In brief, the Plaintiffs case as under:-

One Venugopal Raju having two wives, The Plaintiffs, Defendant Nos.2 and 3 are the children of the Venugopal Raju through their 2nd wife Smt. Gowramma. The Defendant No.1 one Lakshmipathi Raju and Smt. Nagarathnamma are the children of Venugopal Raju through his first wife. The daughter of Venugopal through first wife i.e., Smt. Nagarathnamma was died long back. The Plaintiffs and Lakshmipathi Raju have partitioned their properties under Registered Partition Deed dated:08-02-1969. As per the said partition, the suit schedule property has fallen to the share of Lakshmipathi Raju. Lakshmipathi Raju died issue less, therefore the Plaintiffs are being the legal heirs of the deceased Lakshmipathi Raju having a share in the suit schedule property. Behind the back of the Plaintiffs, the Defendants have filed a suit against the Defendant No.1 in OS. No.683-2010 for the relief of partition and separate possession and they have compromised the said suit and compromise decree was drawn, for which the Plaintiffs are not party, therefore the said compromise decree is not binding on the Plaintiffs and their share. The Plaintiffs have impleaded the Graduates Co-operative Bank as Defendant No.13 after filing of this suit. But in the plaint, the Plaintiffs have not

elaborated that why they have impleaded the Defendant No.13 as a party to the suit.

3. The Defendant No.13 has appeared through his counsel and has filed written statement and it is contending that the 3rd LR of the Defendant No.1 S. Arun Kumar has availed a loan of Rs.15,00,000/- by mortgaging the suit schedule property. Said Arun Kumar is the absolute owner of the suit schedule property by virtue of the registered gift deed dated: 21-07-2011 executed by the Defendant No.1 Smt. Srilakshmi. The katha of the property was also transferred in the name of S. Arun Kumar. Said Arunkumar has produced the certified copy of the final decree and it was registered before the Sub- Registrar, Mysuru. All these facts are well within the knowledge of the Plaintiffs. But they have filed this suit in order to harass the Defendant No.13. Said Arun Kumar has due to the bank a sum of Rs.16,83,090/- and that amount is out standing, therefore the Defendant bank has proceeded to recover the same under SARFAESI Act. The suit of the Plaintiff is not maintainable.

4. The following preliminary issue was framed on 06-08-2012:-

"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?"

5. Heard argument.

6. I have answered the above issue in the "Negative" for the following:-

REASONS

7. The learned counsel for the Plaintiffs has vehemently argued that the Plaintiffs were not a party to the partition suit filed by the Defendant No.1 in OS. 683-2010, that suit was filed during the pendency of this suit. The compromise decree was obtained in collusion, for which the Plaintiffs are not a party. The Plaintiffs are not a party to the loan transaction between Sri. Arunkumar, the 3rd LR of the Defendant No.1 and the Defendant No.13 bank. The transaction took place between Sri. Arunkumar and Defendant No.13 bank is not binding on the Plaintiffs and SARFAESI Act is not applicable to the Plaintiffs, who are third party to the transaction. The learned counsel has contending that Section 34 of the Act is not come in the way of this suit. The learned counsel for the Defendant No.13 has contending that in view of Section 34 of the SARFAESI Act 2002, the suit of the

Plaintiffs is not maintainable. The learned counsel for the Defendant No.13 has relied on the Judgment of the Supreme Court in Civil Appeal No. 9771-2013 (Arising out of Special Leave Petition (Civil) No.18 of 2011) dated:30-10-2013, wherein para No.22 and 23, it was held as under:-

22. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved

person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-Section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.

23. We are of the view that the civil court jurisdiction is completely barred, so far as the "measure" taken by a secured creditor under sub-section (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal to determine as to whether there has been any illegality in the "measures" taken. The bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondent Nos.6 to 8 have been crystalised, before creating security interest in respect of the secured assets. In such circumstances, we are of the view that the High

Court was in error in holding that only civil court has jurisdiction to examine as to whether the "measures" taken by the secured creditor under sub-section (4) of Section 13 of the Securitization Act were legal or not. In such circumstances, the appeal is allowed and the judgment of the High court is set aside. There shall be no order as to costs.

8. In view of the principle laid down in the above decisions even that the Plaintiffs are the third parties, but they can approach the debt recovery tribunal under Section 17 of the Act, since they having a right to appeal and as such the civil court has no jurisdiction to examine as to whether measures taken by the secured creditor is legal or not. Here in this case, no doubt the Plaintiffs have not directly challenged the measures taken by the Defendant No.13 under SARFAESI Act, but they have impleaded the Defendant No.13 as a party to the suit and have indirectly challenged the authority and right of the Defendant No.13 to proceed against the suit schedule property. Even the Plaintiffs have chosen to file an application to stay the proceedings initiated by the Defendant No.13 against S. Arun kumar under the SARFAESI Act. The only one property is involved in this case and said property is subjected to mortgage in favour of Defendant No.13. The Defendant No.13 has proceeded to recover the debts due to it by invoking the provisions of SARFAESI Act 2002. If the Plaintiffs have established that the mortgage created

in favour of the Defendant No.13 is not a valid mortgage and Defendant No.13 not having a right to recover the dues from the suit schedule property, then only the Plaintiffs are entitled to get the share. The suit of the Plaintiffs against the Defendant No.13 is not maintainable. The Plaintiffs can approach the debt recovery tribunal, if they have succeeded, then they can entitle to file a suit for partition. The subject matter of the suit is subjected to mortgage in favour of Defendant No.13 and Defendant No.13 has invoked the SARFAESI Act 2002, therefore suit of the Plaintiffs is not maintainable and liable to be dismissed. Accordingly I have answered preliminary issue in the negative and proceed to pass the following:-

ORDER

Suit of the Plaintiffs is hereby dismissed as not maintainable in view of Section 34 of the SARFAESI Act 2002.

Under the facts and circumstances of the case, no order as to costs.

(Dictated to the stenographer directly on the computer, transcribed by her, corrected by me and pronounced in the open court on 8th day of January 2016).

(M.K. ASHOK)
Judge, Addl. Court of small causes,
Mysuru.

Orders pronounced in the Open Court.
Vide separate Judgment

: O R D E R :

Suit of the Plaintiffs is hereby dismissed as not maintainable in view of Section 34 of the SARFAESI Act 2002.

Under the facts and circumstances of the case, no order as to costs.

Judge,
Addl. Court of small causes,
Mysuru.