KARC020006172019

IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE AND JMFC-I., AT: Raichur.,

: PRESENT :

Present: Sri. Shankarappa Malashetti
B.com, L.L.B.,(Spl)

Addl. Senior Civil Judge & JMFC-I.,
Raichur.

<u>O.S.33/2019</u>

Dated this the 06th day of July-2026.

Between.

1. B. Tayamma W/o Late. B.Tayanna,
Age: 63 years, Occ: Household,
R/o. H.No.3-4-25 and 3-4-26,
Beroon Quilla, Tq and District: Raichur.

2. Laxmi Devi D/o Late. B.Tayanna,
Age: 28 years, Occ: Household,
R/o. H.No.3-4-25 and 3-4-26,
Beroon Quilla, Tq and District: Raichur.

3. Maheshwari D/o Late. B.Tayanna,
Age: 24 years, Occ: Household,
R/o. H.No.3-4-25 and 3-4-26,
Beroon Quilla, Tq and District: Raichur.

...**Plaintiffs**

And:

1. B. Suresh S/o Late. B.Tayanna,
Age: 63 years, Occ: Household,

R/o. H.No.3-4-25 and 3-4-26,
Beroon Quilla, Tq and District: Raichur.

2. The Manger,
Krishna Bhima Samruddin Bank Raichur.

...**Defendants**.

PARTIES TO I.A.No.4

Between.

1.The Manger,
Krishna Bhima Samruddin Bank and another.

...Applicants/defendants

And.

1.Laxmi Devi D/o Late. B.Tayanna and others.

....Opponents/Plaintiffs

ORDER ON INTERIM APPLICATION NO.4 FILED UNDER ORDER VII RULE 11(a), (d) and (d) OF CODE OF CIVIL PROCEDURE

The defendant No.2 has filed I.A. for rejection of the plaint on the ground that there is no cause of action and suit is barred U/sec. 34 of SARFAESI ACT.

2. The plaintiffs have filed objections by denying the contents of application and affidavit and prays to reject the application.

3. Heard on both sides.

4. The points arise for my determination are.

1. Whether the defendant No.2 has made out grounds for rejection of the plaint?

2. What order?

5. My findings on the above points is in the Negative for the following:

REASONS

6. **Point No.1**: The defendant No.2 has filed I.A.No.4 U/O 7 Rule 11(a), (b) and (d) of CPC for rejection of plaint on the ground that, there is no cause of action for filing the suit and suit is barred U/sec.34 of SARFAESI ACT. In the accompanying affidavit defendant No.2 stated that the suit house property bearing MPL No.3-4-23 (o), 3-4-25(n) belongs to Jambanna who was grand father of defendant No.1 and house bearing MPC. No.3-4-24 (O), 3-4-26(n) belongs to Tayanna who was father of defendant No.1. The grand father of defendant No.1 executed notarized affidavit dated 13-02-1998 there by transferred the property in the name of defendant No.1 and the property bearing MPL No.3-4-24(o), 3-4-26(n) owned by Tayanna, also submitted notarized sworn affidavit dated 13-02-1998 and said Tayanna expired on 26-01-1998 leaving behind the defendant No.1 as sole legal heir and there are no other heirs to Tayanna. In respect of Sl.No.1 property the Jambanna got transferred the same to defendant No.1, on which the name of defendant No.1 mutated in the CMC record on 24-02-1998. In respect of Sl.No.2 property defendant No.1 executed affidavit dated 13-02-1998 stating that he is the sole legal heir and there are no other legal heirs to his father. Based on the said the affidavit the CMC has mutated the name of the defendant No.1 to Sl.No.2 property. The defendant No.1 being the sole legal heir had executed registered mortgage deed No.4765/2008-2009 dated 11-11-2008 in favour of the defendant No.2 to the loan borrowed by Ashokan who is proprietor of M/s meeting point Hotel No.11-06-60 situated at Lingasugur road Raichur. Later the borrower has failed to pay the loan amount. Therefore the defendant No.2 initiated proceedings under SARFAESI ACT before the Deputy Commissioner Raichur and obtained order on dated 05-02-2013 for physical possession. Aggrieved by the said order defendant No.1 approached the DRT Bengaluru by filing SA No.206/2013(IR1118-2013) and that was dismissed on 04-04-2014. Thereafter defendant No.1 filed WP No.207040/2015 (GM-

DRT) before Hon'ble High Court of Karnataka at Kalburgi bench. The Hon'ble High court ordered the borrower/ guarantor to deposit Rs.90,000/- within the prescribed time by 17-03-2016, but the defendant No.1 has filed to deposit the said amount. Therefore the WP ultimately disposed by upholding the rights of defendant No.2. After passing of the said interim order in the WP the defendant No.1 and plaintiffs colluding together got filed the present suit for partition with an ulterior motive to defraud and dupe the amount of defendant No.2. During pendency of the present suit defendant No.1 expired on 04-01-2021. This court has no jurisdiction to try the case in view of bar under section 34 of SARFAESI ACT. Therefore prays to reject the plaint.

6. The plaintiffs have filed objections to the IA stating that it is not maintainability either in law or on facts of the case. The suit property is ancestral property of the plaintiffs. But the defendant No.2 without verifying the records, only based on mutations in the name of defendant No.1 got executed mortgage deed without the consent of the plaintiffs. It is purey negligence of the defendant No.2. The plaintiffs came to know about the alleged the act of defendant No.2 then only the present suit for partition is failed. The SARFAESI ACT overrides only when the entire property belongs to defendant No.1. Therefore the application filed by the defendant No.2 is not maintainable, Hence prays to reject the IA with cost.

7. He relied on the Judgments about which discussed in subsequent paras.

8. On perusal of the application, objections, hearing arguments on both sides, as per Order VII Rule 11 of C.P.C. if a suit is barred under any law or if it comes under the purview of said Rule, then only the plaint can be rejected. For better appreciation the Order VII Rule 11 of C.P.C. is reproduced as under:

Order 7 Rule 11 of CPC reads as follows:

> "11. Rejection of plaint.— 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 paper 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
>
> [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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-paper, 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."

9. It is the basic Rule that while considering the application U/Or VII Rule 11 of C.P.C. the Court has to look into only the averments of the plaint and documents produced by the plaintiff. The said principle laid down in the judgments reported in 2019 (5) KCCR SN 249 (SC), between, Urvashiben and Another V/s Krishnakant Manuprasad Trivedi.

10. In this case the plaintiffs specifically alleged that the suit schedule house properties are ancestral properties of plaintiffs and defendant No.1. The defendant No.1 without any partition and without knowledge of the plaintiffs got mutated his name in the revenue records and he mortgaged suit properties to defendant No.2 as a guarantor to the loan borrowed by a person by name A. Ashokan. The said fact came to the knowledge of the plaintiffs when the defendant No.2 tried to take possession of the suit properties on 24-12-2018 under Sarfaesi Act. Then the defendant No.2 and it officials came to know about the illegality, possession and rights of the plaintiffs they left the suit properties. The defendant No.1 has no authority to mortgage the suit properties to defendant No.2 without the consent of other share holders of the family. The plaintiff No.2 and 3 are the childerns of Tayanna and they are unmarried daughters leaving in the suit properties. The plaintiffs are having equal share in the suit properties. In view of denial of the plaintiffs rights they are constrained to file the suit and sought for partition claiming 3/4th share to the plaintiffs and declaration stating that the registered mortgage deed No.4765/2008-2009 executed by defendant no.1 in favour of defendant No.2 is illegal and not binding to the shares of the plaintiffs. they also sought for permanent injunction restraining the defendants from interfering in the suit schedule properties. The defendant No.2 meanly relied on Section 34 of the Sarfasie Act and contended that this court has no jurisdiction to try the case and there is no cause of action for filing the suit. He also relied on the following judgments:

1. WP.No.15801/2020 (GM-CPC) C/W. MFA No.895/2021(CPC) of Hon'ble High Court of Karnataka at Bengaluru dated 24-08-202**3,** name of the parties Smt. Ashwini Shetty V/s Sri. Manohar Shetty and others.

2. CRP No.12/2024 (IO) of Hon'ble High Court of Karnatnaka at Bengaluru dated 24-06-2024. name of the parties Sri. Admar Mutt Kaliya V/s. Smt. Vishalakshi and others.

11. In the Sl.No.1 of the above said judgments is held that suit for partition would not be maintainable in a situation where proceedings under the Sarfaesi Act had been initiated.

12. In the Sl.No.2 of the above said judgment it is held that while considering application Under order 7 rule 11 of CPC it is not necessary for the defendant to file written statement and only the plaint averments have to be look into.

13. But Plaintiffs relied on the following judgments:

1. Civil Appeal No.1876/2016 dated 09-01-2025 of Hon'ble Supreme Court. Name of the parties Central bank of India and others V/s Prabha Jain and others. In the said judgment the facts are that the suit lands were purchased by father-in-law of the plaintiff on 19-06-1967 and he expired on 15-08-2005, there by the said property was inherited by the late husband of plaintiff by name Mahendra Kumar Jain, her husband's elder brother by name Sumera Chnda Jain (defendant No.4) and her mother in law. After death of the plaintiff's husband she inherited 1/3rd share of her husband. But her husband's brother Sumer Chand Jain without any partition among the heirs divided the land into several plots and sold them illegally to different persons. One such plots was sold to defendant No.5 by name Parameshara Das Prajapathi vide registered sale deed dated 03-07-2008. The said defendant No.5 mortgaged the same to Central Bank of India and obtained the loan. Later the defendant No.5 committed the default in payment of loan. Therefore the bank has initiated proceedings under Sarfaesi Act Therefor the plaintiff has filed suit for declaration that the sale deed executed by her husband's brother in favour of defendant No.5 and the mortgage deed executed by defendant No.5 in

favour of the Bank are null and void and the bank has no right to sell the suit plots and also prays for possession. In the said suit the bank has filed the application under order 7 rule 11 of CPC for rejection of the plaint, on the ground that Civil court has no jurisdiction to try the case in view of bar under section 17 of Sarfaesi Act. The said application was allowed by the trial court and rejected the plaint. Aggrieved by the said order the plaintiff approached the Hon'ble High Court and Hob'ble High Court has allowed the First Appeal and held as under:

" From the scheme of the SARFAESI ACT narrated above, it is apparent that the Debts Recovery Tribunal has no jurisdiction to decide the question whether persons others than the mortgager had title in the mortgaged property. In that context the validity of the sale deed of a property mortgaged with the Central Bank of India cannot be decided the the Debts Recovery Tribunal. If the sale deed is held to be wholly or partially invalid it will immediately affect the validity of the mortgage of that property. The jurisdiction of civil court is ousted in respect of matters which the Debts Recovery Tribunal is empowered to decide. Absence of a provision to enable the Debts Recovery

Tribunal for holding an enquiry on a particular question is indicative that jurisdiction of civil court on that question is not excluded. The above question relating to the validity of the sale deed and its consequent effect on the mortgage are matters which the Debts Recovery Tribunal is not empowered to decide. The provision for appeal Under Section 17 of the SARFAESI ACT by " any person" does not oust the jurisdiction of civil court on matters which cannot be decided by the Debts Recovery Tribunal. Therefore, the jurisdiction of the civil court to decide these matters cannot be held to be ousted Under Section 34 of the SARFAESI Act.

We also disagree, with the finding of the trial court that proper Court fee has not been paid by the plaintiff. The plaintiff is not a signatory or party in the sale deed as well as in the mortgage deed. She is, therefore, not required to claim the consequential relief of the cancellation of these documents. And for the relief claimed by her for the declaration of sale deed and mortgage as illegal, she has paid the proper Court fee. The Consequential relief which the plaintiff has claimed and which is appropriate in the circumstances of the case is possession of the suit land /

plot. The suit land / plot is assessed to the land revenue at Rs.1/-. She has valued this relief at Rs.20/- and paid Rs.100/- Court fee as required Under Section 7(v)(a) of the Court Fees Act. 1870. The plaintiff has thus paid the proper Court fee.”

14. The Hon’ble lordship has held that the DRT had no jurisdiction to decide the civil rights of the parties like, whether the plaintiffs are having share or not in the mortgaged property. Because that has to be decide by the Civil court by conducting the detailed trial. In this case also plaintiffs have specifically pleaded that they are the joint family members and having equal share. Therefore in order to ascertain the rights of the plaintiff, this court is having jurisdiction. The defendant No.2 has not denied the rights of the plaintiffs.

15. Further The Hon’ble Supreme Court also held as under: in para No.23(v)(3).

“ (3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in Sub-Section (4) of Section 13, taken

by the secured creditor are not in accordance with the provisions of this Act and the Rules made there under, and require restoration of the management or restoration of possession, of the the secured assets to the borrower or other aggrieved person, it may,by order:-

(a) declare the recourse to any or more measures referred to in Sub-Section (4) of Section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application Under Sub-Section(1), as the case may be; and

(c) Pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor Under Sub-Section (4) Section 13, even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the SARFAESI Act, still the plaint must survive because there cannot be a partial rejection of the plaint under order VII, Rule 11 of the CPC. Hence, even if one relief survives. The plaint cannot be

rejected under order VII, Rule 11 of the CPC. In the case on hand, the first and second reliefs as prayed for are clearly not barred by section 34 of the SARFAESI Act and are within the civil court's jurisdiction. Hence , the plaint cannot be rejected under order VII Rule 11 of the CPC.

If the Civil Court is of the view that one relief (say relief A) is not barred by law but is of the view that relief B is barred by law, the civil court must not make any observations to the effect that relief B is borrowed by law and must leave that issue undecided in an order VII, Rule 11 application. This is because if the Civil court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against relief B.

16. The judgment relied by the plaintiff are pertaining to Hon'ble Supreme Court and they are delivered in the year 2025. The judgments relied by the defendant No.2 are pertaining to the Hon'ble High Court of Karnatka. Therefore the judgments delivered by Hon'ble Supreme court prevails. Therefore the judgments relief by defendant No.2 are not applicable to the case on hand and as per the judgment of Hon'ble Supreme Court the application filed by defendant no.2 under 7 rule 11 of CPC is not maintainable. Even though the defendant No.1 expired during pendency of the case but the plaintiffs have also sought to declaration in respect of the mortgage deed. Therefore even if the relief of partition is infectious the relief of declaration is very well maintainable. Their are traible issues which cannot be decided an U/o 7 rule 11 of CPC. If the application is allowed the plaintiffs will be put to mach hardship and loss which cannot be compensation in terms of money. By rejecting the application no hardship will be cause to the defendant No.2. Hence the point No.1 is held in Negative.

17. **Point No.2:** For the reasons discussed above, I proceed to pass the following:

ORDER

IA No.4 filed by the defendant No.2 U/o VII rule 11(a), (b) and (d) R/w 151 of CPC is hereby rejected in the ends of justice and equity.

No order as to costs.

(Dictated to the Stenographer, directly on computer corrected and then pronounced by me in the open court, this the 06th day July-2026)

Sd/-
(Shankarappa Malashetti)
Addl. Senior Civil Judge
& JMFC-I, Raichur.