MHKO100004072022

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Order passed below Exh.5

This is an application by the plaintiff for grant of temporary injunction order for prohibiting defendant no. 7 Manager of Union Bank of India, Branch Gadhinglaj from preparing kabje-patti panchanama of the suit property.

2. Read the application, say not filed. Case is proceeded exparte against the contesting defendant.

3. Following points have arisen for my consideration and I have given findings thereon for the reasons stated thereunder :

Sr No.	Points	Findings
1	Whether the plaintiff has made out prima facie case ?	**No.**
2.	Whether balance of convenience lies in favor of the plaintiff ?	**No.**
3	Whether the plaintiff will suffer irreparable loss, if T.I is not granted ?	**No.**
4.	What order?	**As per final order.**

4. I have heard Ld.Adv.Shri. Nikam for the plaintiff. I have perused the plaint, application Exh.5 and documents on record. I have also perused the notes of argument filed at Exh. 14. Ld.Adv.Shri. Nikam has been relied on

i) provisions of sec. 13 and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002,

ii) Mardiya Chemical Ltd. V/.s Union of India reported in 2004(2) Mh.L.J. 1090 S.C. wherein Hon'ble Apex Court has inter-aliea held that, in view of the bar contented in sec. 34 of the Act, the limited extent to which jurisdiction of Civil court can be invoked where the action of the secured creditor is alleged to be fraudulent or claim is so absured and untenable which may not required any probe or to the extent the scope is permissible to bring an action in the civil court in the case of English mortgage.

iii) Chaya Bapu Koli V/s. Navbharat Vikas Society Law (Bom) 1983 wherein His Lordship of Honourable Bombay High Court has inter-alia held that, the decree holder can only attach such property which they claim and succeed in showing as the property of deceased.

5. The suit is filed for partition & injunction in respect to CTS No. 304 and 265 of village Jarli which is described in detail in para no. 1 of the plaint. The plaintiff is mother of mother of defendant no. 1 & 2. It is averred that, the suit property is ancestor and the plaintiff is having $1/16^{th}$ hissa in it. It is averred that, plaintiff is residing in the suit property. However defendant no. 7 has affix notice on the suit property on 21/02/2022. Thereafter, plaintiff came to know defendant no. 1 & 2 have purchased $2/3^{th}$ hissa of the suit property from original ancestor deceased Ramappa vide deed no.

1762/1997. It is averred that, by affixing notice dtd. 21/02/2022 defendant no. 7 is trying to dispossess the plaintiff in the suit property. Hence, status-quo is claimed.

6. I have minutely gone through the pleading and documents on record. The property extract shows name of defendant no. 1 & 2 and they are shown in the possession in the suit property. The plaintiff has also produced sale deed 1762/1997. The notice issued by defendant no. 7 i.e. Union Bank of India Ltd, Branch Gadhinglaj shows that, defendant no. 1 & 2 have taken loan of Rs. 7,98,351/- from the bank but did not repay it. Therefore, the authorized officer has issued possession notice as per provisions of sec. 13(12) r/w. Rule 8 of the Securitisation Act. The para no. 2 of the said notice show that, the Authorized Officer has taken possession of the property as per provisions of sec. 13(4) of the Act as on 21/02/2022. The plaintiff is mother of mother of defendant no. 1 & 2. It appears that, the authorized officer has started proceeding as per the provisions of securitization Act for recovery of loan from defendant no. 1 & 2. The disputed property appears to be mortgaged for the loan but defendant no. 1 & 2 have not appear in a suit and filed their say. Till date, defendant no. 1& 2 have not raised any objection to the proceeding initiated by the bank but their mother has filed this suit. Therefore, it appears that, there is some sort of collusion between plaintiff and defendant no. 1 & 2 against the bank i.e. defendant no. 7. Plaintiffs name is not there in the record of suit property. The sale deed is executed in the year 1997 but till date plaintiff has not raised any objection about it. Similarly, the bank is taking action for recovery of loan against the defendant no. 1 & 2. There is nothing to ascertain that the action of the authorized officer is totally fraudulent. As also, there is nothing to ascertain that the claim of defendant no. 7 is totally absured and untenable. Therefore with due respect ratio laid down in the case of Mardiya Chemecal and Chaya Koli (Cited supra) are not applicable to the case in hand. Besides this, in view of provisions of sec. 34 of the Act Civil Court has no jurisdiction to try and entertain the suit and proceeding in respect of any matter which DRT is empowered under the Act to determine. In the circumstances, there is no prima facie case to the plaintiff, no irreparable loss will be caused to the plaintiff by act of defendant no. 7. No such instances are shown by the plaintiff. Therefore, there are no grounds for grant of temporary injunction. Hence, point no. 1 to 3 are answered in the negative. Untimely, I pass following order.

O R D E R

1) **Application Exh. 5 is rejected.**
2) **C.O.A.**

(Dictated in pronounced in open court)

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Date: 2022.05.07 14:48:24 +0530

Digitally signed by Maheshkumar Tanajirao Kharade
Date: 2022.05.06 16:50:11 +0530

Date 06/05/2022.
Place : Gadhinglaj

(M.T. Kharade)
Jt. Civil Judge Junior Division,
Gadhinglaj