APHC010185262025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3524]
(Special Original Jurisdiction)

TUESDAY ,THE SIXTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

APPEAL SUIT NO: 219/2025

Between:

Smt. Chennamsetti Sarika @ Venkata Sarika, **...APPELLANT**

AND

The Kanaka Mahalakshmi Cooperative Bank Ltd and Others **...RESPONDENT(S)**

Counsel for the Appellant:

1. ELURU SESHA MAHESH BABU

Counsel for the Respondent(S):

1.

The Court made the following:

Interim order: *(per Ravi Nath Tilhari,J)*

Heard learned counsel for the appellant.

2. The appellant is the plaintiff who filed O.S.No.44 of 2022 in the Court of Principle District Judge, West Godavari, Eluru. The suit was filed inter-alia for partition of the plaint schedule property, to allot the share with separate possession, notwithstanding the document i.e., Mortgage Deed dated

15.09.2016 vide Doc.No.8869/2016 of SRO, Eluru which was executed by defendant No.2 in the suit in favour of the Bank-defendant No.3. *Inter-alia* it was pleaded that there was a partition deed executed between the grandfather and defendant No.1 i.e., father of the plaintiff without allotting any share either to the plaintiff or to the defendant No.2 who is the brother of the plaintiff. It was further pleaded that the defendant No.1 had no right to execute the document in favour of defendant No.2 i.e., settlement deed and so the defendant No.2 had no right to mortgage in favour of defendant No.3.

3. The Bank-defendant No.3 filed I.A.No.1318 of 2022 under Order 7 Rule 11 CPC to reject the plaint.

4. After contest, the suit, application has been allowed by learned Trial Court and the plaint has been rejected holding that the Civil Court has no jurisdiction under Section 34 of SARFAESI Act.

5. Learned counsel for the appellant submits that in view of the pleadings, the question required to be determined is with respect to the right of the plaintiff in the suit property as also the validity of the mortgage deed, which can be considered only by the Civil Court and not by the Debt Recovery Tribunal. The proceedings initiated by the Bank with respect to the plaint schedule property under the SARFAESI Act are not in question in suit. So, the Civil Courts jurisdiction is not barred here, the question is with respect to the determination of partition deed and mortgage deed. So Section 34 of SARFAESI Act is not attracted.

6. Learned counsel for the appellant places reliance in ***Central bank of India v. Prabha Jain*** {LAWS (SC) – 2025 – 1 -111} in para 18 which reads as under:

> 18. Further, the SARFAESI Act is enacted essentially to provide a speedy mechanism for recovery of debts by banks and financial institutions. The SARFAESI Act has not been enacted for providing a mechanism for adjudicating upon the validity of documents or to determine questions of title finally. The DRT does not have the jurisdiction to grant a declaration with respect to the mortgage deed or the sale deed as sought by the plaintiff. The jurisdiction to declare a sale deed or a mortgage deed being illegal is vested with the civil court under Section 9 of the Code of Civil Procedure. Therefore, the Civil Court has the jurisdiction to finally adjudicate upon the first two reliefs.

7. The matter requires consideration.

8. Issue notice to the respondents.

9. In addition to the normal mode of service, the appellant is permitted to take out personal notice to the respondents by registered post and acknowledgment due and file proof of service in the Registry before the next date of listing.

10. Post after Summer Vacation, 2025.

11. The operation of the impugned order of rejection of plaint under Order 7 Rule 11 CPC shall remain stayed, till the next date of listing. It is clarified that this order shall not effect, the pending proceedings before Debt Recovery Tribunal under SARFAESI Act.

RAVI NATH TILHARI,J

MAHESWARA RAO KUNCHEAM,J

AG