

(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
TUESDAY, THE SIXTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE



:PRESENT:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
AND

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM
APPEAL SUIT NO: 219 OF 2025

Between:

Smt. Chennamsetti Sarika @ Venkata Sarika, W/o Manikumar, Indian, Female, Age 35 years, # 970, Anatrella In, Nw, Concord 28027, North Carolina, USA, email: sarika.chennamsetty9@gmail.com, Contact No: 007-704-7793549.

Appellant/Respondent No.1/Plaintiff

AND

1. The Kanaka Mahalakshmi Co-Operative Bank Ltd., Rep., by its Branch Manager, Satrampadu Branch, G & T Road, Eluru, Eluru District, Erstwhile West Godavari District.

...Respondent/Petitioner/Defendant No.3

2. Sri. Pasupuleti Venkata Atchayya Prasad, S/o Late Venkata Ratnam, Indian, Male, Age 67 years, D.No. 27-1-42, Ameenapeta, Eluru, Eluru District. Erstwhile West Godavari District.
3. Sri. Pasupuleti Venkata Sandeep, S/o. Venkata Atchayya Prasad, Indian, Male, Age 34 years, R/o. D.No 24-1-42, Ameenapeta, Eluru, Eluru District. Erstwhile West Godavari District.

Respondents/Respondents No. 2 & 3/Defendants 1 & 2

WHEREAS the Appellant above named through her Advocate Sri. ELURU SESA MAHESH BABU presented this Appeal Under Section 96 of CPC., is filed to allow the Appeal by set aside the Decree Order passed in

I.A.NO.1318/2022 in O.S.NO.44/2022 on the file of the Principal District Judge, West Godavari, Eluru, dated 22nd day of November, 2024,

AND WHEREAS the High Court upon perusing the petition and memorandum of grounds filed herein and upon hearing the arguments of Sri ELURU SESH MAHESH BABU Advocate for the Petitioner, directed issue of notice to the Respondents herein to show cause as to why this FIRST APPEAL should not be admitted.

You viz:

1. The Branch Manager, The Kanaka Mahalakshmi Co-Operative Bank Ltd., Satrampadu Branch, G & T Road, Eluru, Eluru District, Erstwhile West Godavari District.
2. Sri. Pasupuleti Venkata Atchayya Prasad, S/o Late Venkata Ratnam, Indian, Male, Age 67 years, D.No. 27-1-42, Ameenapeta, Eluru, Eluru District. Erstwhile West Godavari District.
3. Sri. Pasupuleti Venkata Sandeep, S/o. Venkata Atchayya Prasad, Indian, Male, Age 34 years, R/o. D.No 24-1-42, Ameenapeta, Eluru, Eluru District. Erstwhile West Godavari District.

Are be and hereby directed to show cause either appearing in person or through an Advocate, as to why in the circumstances set out in the petition and the memorandum of grounds filed therewith (copy enclosed) this FIRST APPEAL should not be admitted on or before 16.06.2025.

The Court made the following ORDER:

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.

Sd/- K. J. RAJA BABU
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal District Judge, West Godavari, Eluru.
2. The Branch Manager, The Kanaka Mahalakshmi Co-Operative Bank Ltd., Satrampadu Branch, G & T Road, Eluru, Eluru District, Erstwhile West Godavari District.
3. Sri. Pasupuleti Venkata Atchayya Prasad, S/o Late Venkata Ratnam, Indian, Male, Age 67 years, D.No. 27-1-42, Ameenapeta, Eluru, Eluru District. Erstwhile West Godavari District.
4. Sri. Pasupuleti Venkata Sandeep, S/o. Venkata Atchayya Prasad, Indian, Male, Age 34 years, R/o. D.No 24-1-42 (Addressee Nos. 2 to 4 by RPAD- along with a copy of petition and memorandum of grounds)
5. One CC to Sri. ELURU SESHMAHESH BABU, Advocate [OPUC]
6. One spare copy
JSS

HIGH COURT

RNT, J

&

MRK, J

DATED:06/05/2025

POST AFTER SUMMER VACATION, 2025.

NOTICE BEFORE ADMISSION

AS.No.219 of 2025



STAY