



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 16<sup>TH</sup> DAY OF JULY, 2021**

**BEFORE**

**THE HON'BLE MR. JUSTICE M.I.ARUN**

**RFA NO.1397 OF 2019 (DEC)**

**BETWEEN:**

SMT. NANJAMMA  
W/O CHANNAVEERASHETTY  
AGED ABOUT 62 YEARS  
R/AT NO.45, OLD NO.71/6  
4<sup>TH</sup> CROSS, MEENAKSHINAGARA  
KAMAKSHIPALYA, BENGALURU - 79 ... APPELLANT

(BY SRI. M.SRIKANTH, ADV. AND  
SRI. H.K.PARAMESH KUMAR, ADV.)

**AND:**

1. SRI. N.NARASIMHAMURTHY  
S/O NANJAPPA  
AGED ABOUT 54 YEARS
2. SMT. YESHODA  
W/O N. NARASIMHAMURTHY  
AGED ABOUT 48 YEARS

RESPONDENT NOS.1 AND 2 ARE  
R/AT NO.152, SRIGANDHAKAVAL  
SUNKADAKATTE, BENGALURU - 560 091

3. SMT. YASHODA U SHETTY  
W/O LATE UMESH S.N.  
AGED ABOUT 42 YEARS  
R/AT NO.179, 5<sup>TH</sup> MAIN



## **JUDGMENT**

This appeal is filed by the plaintiff against the order dated 23.04.2019 passed by XXII Additional City Civil and Sessions Judge, Bengaluru, on I.A.No.5 in O.S.No.3780/2017. By the impugned order, the trial court has allowed I.A.No.5 filed by defendant no.4 under Order VII Rule 11(b) and (d) of CPC and has rejected the plaint as not maintainable in view of the bar under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

2. For the sake of convenience, the parties are referred to herein as per their status before the trial court.

3. It is contended by the plaintiff that she is the owner of the property bearing No.45 (old no.71/6) situated at 4<sup>th</sup> Cross, Meenakshinagar, Kamakshipalya, Bengaluru - 560 079, totally measuring 900 square feet, which is hereinafter referred to as the suit schedule property.

4. It is alleged that the plaintiff had sold the property in favour of defendant no.1 by virtue of a registered sale deed dated 27.11.2009. Thereafter, the suit schedule property has been mortgaged in favour of defendant nos.4 and 5-Banks for loans availed. It is the contention of the plaintiff that defendant nos.1, 2 and 3 have jointly colluded with each other and have played fraud upon the plaintiff and have obtained the sale deed dated 27.11.2009 and thereafter defendant nos.1 and 2 colluding with respondent nos.4 and 5 (bank officials) have mortgaged the suit schedule property in favour of the said Banks. It is stated that upon default committed by the borrowers, defendant nos.4 and 5-Banks initiated necessary proceedings for attachment and sale of the suit schedule property. Hence, the plaintiff has preferred O.S.No.3780/2017 wherein she has sought for a declaration that the alleged sale deed dated 27.11.2009 in respect of the suit schedule property is an act of fraud and not binding on the plaintiff. She has also sought for a relief of declaration that the mortgage deed dated 20.08.2013 executed by defendant no.1 in

favour of defendant no.5 in respect of the suit schedule property and the mortgage executed by defendant no.1 in favour of defendant no.4 also in respect of the suit schedule property are acts of fraud, illegal, null and void and not binding upon the plaintiff and consequently has sought for a permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit schedule property.

5. Upon service of summons, defendant nos.1 to 3 have not filed written statement. Defendant no.5 has filed written statement. Defendant no.4 which in the meanwhile had invoked its powers under Section 13(4) of the SARFAESI Act, has filed an application under Order VII Rule 11(b) and (d) of CPC seeking dismissal of the suit on the ground that the suit is barred by Section 34 of the SARFAESI Act, Article 54 of the Limitation Act and that the suit is undervalued. The plaintiff has filed her objections to the said application. The trial court has not examined whether the suit is barred by Article 54 of the Limitation Act or has been undervalued, but on the ground that it is barred

by Section 34 of the SARFAESI Act has rejected the plaint as not maintainable. Aggrieved by the said order, the plaintiff has preferred this appeal.

6. Upon service of notice, respondent nos.4 and 5 (defendant nos.4 and 5) have appeared through their respective Counsel. Respondent nos.1, 2 and 3 have not contested the appeal. As I.A.No.5 in the original suit which resulted in rejection of the plaint was filed by respondent no.4 (defendant no.4). It has contested this appeal. The learned counsel for respondent no.5 has remained absent. Heard the learned counsel for the appellant and respondent no.4-Bank.

7. The contention of the plaintiff is that as per Section 34 of the SARFAESI Act, the Civil Court shall not have jurisdiction to entertain any suit or proceedings only in respect of a matter which the Debts Recovery Tribunal or Appellate Tribunal is empowered by or under the SARFAESI Act to adjudicate and it does not bar the Civil Court to entertain any other matter. Under Section 13(4) of the

SARFAESI Act, if a borrower commits default, the secured creditor may take recourse to any of the measures mentioned therein and accordingly can take possession of the secured asset of the borrower and sell the same. In the event of such action, the aggrieved person has to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. But, in the instant case, the action of the Bank which is sought to be challenged is only a consequential relief and the main relief being a declaration that the sale deed executed by the plaintiff in favour of defendant no.1 in respect of the suit schedule property is an act of fraud, illegal and not binding on the plaintiff. It is the contention of the plaintiff that such a relief cannot be prayed before the Debts Recovery Tribunal and the Debts Recovery Tribunal is not competent to grant the said prayer. Accordingly, the proper forum is the Civil Court. In support of her contention, the appellant has relied upon the following decisions:

1. BANK OF BARODA vs. GOPAL SHRIRAM PANDA [2021 SCC OnLine Bom 466]

2. ROBUST HOTELS (P) LTD. v. EIH LTD. [(2017)1 SCC 622]

8. Per contra, respondent no.4/defendant no.4 has justified the impugned order and has prayed for dismissal of the appeal. It has contended that the Debts Recovery Tribunal is authorized to examine the dispute on hand and accordingly, a civil suit is barred under Section 34 of the SARFAESI Act. In support of its contention, respondent no.4 has relied upon the following decisions:

1. CANARA BANK v. P.SELATHAL [(2020)13 SCC 143]

2. UNITED BANK OF INDIA v. SATYAWATI TONDON [(2010)8 SCC 110]

9. The question that arises for consideration in this appeal is whether the Debts Recovery Tribunal is authorized to adjudicate upon a matter where the transaction in respect of the suit schedule property prior to mortgage of the same in favour of the Bank is under challenge.

10. Section 34 of the SARFAESI Act reads as under:

**“34. Civil court not to have jurisdiction.—**  
No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no

injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).”

11. Section 13(4) of the SARFAESI Act reads as under:

“13(4). In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole, of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets

from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.”

12. Section 17 of the SARFAESI Act reads as under:

**“17. Application against measures to recover secured debts.**-(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:

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*Explanation.*—For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.

(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-

- (a) the cause of action, wholly or in part, arises;
- (b) where the secured asset is located; or
- (c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in

sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(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 thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,-

(a) declare the recourse to any one 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) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(4A) Where -

(i) any person, in an application under sub-section (1), claims any tenancy or

leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,-

- (a) has expired or stood determined; or
  - (b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or
  - (c) is contrary to terms of mortgage; or
  - (d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and
- (ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four

months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."

13. The High Court of Judicature at Bombay in ***BANK OF BARODA vs. GOPAL SHRIRAM PANDA [2021 SCC OnLine Bom 466]*** has exhaustively dealt with the powers of the Debts Recovery Tribunal to try cases under the SARFAESI Act and in paragraph 27 of the judgment has held as under:

"27. In view of what we have discussed above, our considered opinion to the question as referred to is as under :-

**Question :**

*"Whether the jurisdiction of a Civil Court to decide all the matters of civil nature, excluding those*

*to be tried by the Debts Recovery Tribunal under Section 17 of the Securitisation Act, in relation to enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitisation Act ?*

**Answer :**

The answer, looking to the nature of the question, in our view, is in parts :-

(A) Jurisdiction of the Debts Recovery Tribunal, to decide all matters relating to Sections 13 and 17 of the SARFAESI Act, is exclusive.

(B) In all cases, where the title to the property, in respect of which a 'security interest', has been created in favour of the Bank or Financial Institution, stands in the name of the borrower and/or guarantor, and the borrower has availed the financial assistance, it would be only the DRT which would have exclusive jurisdiction to try such matters, to the total exclusion of the Civil Court. Any pleas as raised by the borrowers or guarantors, vis-a-vis the security interest, will have to be determined by the DRT.

(C) The jurisdiction of the Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Sections 13 and 17 of the SARFAESI Act, in relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the SARFAESI Act.

(D) Where civil rights of persons other than the borrower(s) or guarantor(s) are involved, the Civil Court would have jurisdiction, that too, when it is prima facie apparent from the face of record that the relief claimed, is incapable of being decided by the DRT, under Section 17 of the DRT Act, 1993 read with Sections 13 and 17 of the SARFAESI Act.

(E) Even in cases where the enforcement of a security interest involves issues as indicated in

Mardia Chemicals (supra) of fraud as established within the parameters laid down in A. Ayyasamy (supra); a claim of discharge by a guarantor under Sections 133 and 135 of the Contract Act [Mardia Chemicals (supra)]; a claim of discharge by a guarantor under Sections 139, 142 and 143 of the Contract Act; Marshaling under Section 56 of the Transfer of property Act [J.P. Builders (supra)]; the Civil Court shall have jurisdiction.

(F) Examples as indicated in para 22.3, are illustrative of the Civil Court's jurisdiction.

(G) The principles laid down in para 33 (i) to (ix) of Sagar Pramod Deshmukh (supra) are in accordance with what we have discussed and held above.”

14. The Hon'ble Supreme Court of India in ***ROBUST HOTELS (P) LTD. v. EIH LTD. [(2017)1 SCC 622]*** while dealing with the scope of Civil Court under Section 9 of the Code of Civil Procedure, 1908 and exclusion of its jurisdiction by Section 34 of the SARFAESI Act in paragraphs 31 to 33 of the judgment has held as under:

“31. The scope and ambit of Section 34 of SARFAESI Act, 2002 have been considered by this Court in several cases. It is sufficient to refer to the judgment of this Court in Nahar Industrial Enterprises Ltd. V. Hong Kong & Shanghai Banking Corpn. (2009) 8 SCC 646. This Court held that the jurisdiction of the Civil Court is plenary in nature, unless the same is ousted, expressly or by necessary implication, it will have jurisdiction to try all types of suits.



“(i) Any suit or proceeding in respect of any matter in which the Debts Recovery Tribunal or Appellate Tribunal is empowered by or under this Act to determine.

(ii) Further, no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.”

Thus the bar of jurisdiction of Civil Court has to correlate to the above mentioned conditions. For the purposes of this case, we are of the view that this Court need not express any opinion as to whether suits filed by EIH were barred by Section 34 or not, since the issues are yet to be decided on merits and the appeal by Robust Hotels has been filed only against an interim order.”

15. A reading of the aforementioned provisions of the SARFAESI Act in Sections 13(4), 17 and 34 supra and the aforementioned judgments makes it clear that the jurisdiction of the Civil Court is ousted only in respect of those proceedings which are exclusively triable by the Debts Recovery Tribunal under the provisions of Section 17 of the SARFAESI Act. In other aspects, the Civil Court has jurisdiction to try the case. In the process, as a consequential relief, the Civil Court can always adjudicate as to whether the mortgage done in favour of a Bank is valid or not.

16. As per the provisions of Section 17 of the SARFAESI Act, the Debts Recovery Tribunal can adjudicate matters pertaining to measures referred to in sub-section (4) of Section 13 taken by the secured creditor is in accordance with law or not and the claims of any tenancy or leasehold rights upon the secured asset. It is not empowered to adjudicate on other matters. It cannot adjudicate, as in the instant case, as to whether the mortgager played any fraud on his vendor and got the suit schedule property registered in his name which is much prior to mortgage of the same in favour of the Bank. Such disputes are triable only by the Civil Court.

17. The respondent no.4/defendant no.4 Bank has relied on ***UNITED BANK OF INDIA v. SATYAWATI TONDON [(2010)8 SCC 110]***. At paragraphs 42, 43 and 50 it has been held as under:

“42. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The

expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

50. In *Punjab National Bank v. O.C. Krishnan and others* [(2001) 6 SCC 569], this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed: (SCC p. 570, paras 5-6)

"5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

18. The Apex Court in ***CANARA BANK vs. P.SELATHAL*** [(2020)13 SCC 143] while examining a case wherein a

suit was filed challenging the decree passed by the Debts Recovery Tribunal in paragraphs 10 to 15 has held as under:

“10. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case on hand and the averments in the plaints, we are of the opinion that both the courts below have materially erred in not rejecting the plaints in exercise of powers under Order 7 Rule 11 CPC. As observed hereinabove, the main prayer in the suits is challenging the decree passed by DRT. The decree passed by the learned DRT and even the order passed by the Recovery Officer are appealable under Section 20 of the RDDBFI Act. In *Punjab National Bank v. O.C. Krishnan [(2001)6 SCC 569]*, this Court has observed and held that in view of the alternate remedy of preferring the appeal before DRAT, the petition under Article 227 challenging the order passed by DRT shall not be maintainable, without exhaustion of such remedy. In *O.C. Krishnan*, decree passed by DRT was challenged in a petition under Article 227 of the Constitution of India. The High Court allowed the petition. While allowing the appeal of the bank – Punjab National Bank, this Court has observed that without exhaustion of the remedies under the RDDBFI Act, the High Court ought not to have exercised its jurisdiction under Article 227. While holding so, in paragraph 6, this Court has observed and held as under: (*O.C. Krishnan case, SCC p.570*)

“6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to

proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.”

11. Relying upon and following the decision of this Court in *O.C. Krishnan*, thereafter the Division Bench of the Madras High Court in the case of *M/s Cambridge Solutions Limited v. Global Software Ltd.* (2016 SCC OnLine Mad 23265), has rejected the plaint in which the order passed by DRT was challenged, in exercise of powers under Order 7 Rule 11 (d) CPC. It is required to be noted that in the said case also there were allegations of fraud in the plaint and considering the averments in the plaint, it was found that the allegations of fraud are illusory. It is observed by the Division Bench in the said decision that specific instances and acts of fraud with evidence have to be pleaded in the plaint. It is further observed that mere statements are not enough. It is further observed that it is not sufficient if just fraud is pleaded and there must be material to show that the fraud is committed.

12. Having considered the pleadings and the averments in the suits, more particularly the allegations of fraud, we find that the allegations of fraud are with respect to the partnership deed and there are no allegations at all with respect to mortgage created by the Guarantor – Shri Kallikutty and that too with respect to the deed of guarantee

executed by the Guarantor. Much reliance is placed upon the judgment and order passed by the learned Magistrate holding the partners of the firm guilty. However, it is required to be noted that even in the said judgment passed by the learned Magistrate there is no reference to the deed of guarantee and/or the mortgage created by the Guarantor. Even the bank is not a party to the said proceedings. It is reported that against the judgment and order passed by the learned Magistrate, further appeal is pending. Be that as it may, considering the pleadings/averments in the suits and the allegations of fraud, we are of the opinion that the allegations of fraud are illusory and only with a view to get out of the judgment and decree passed by DRT. We are of the opinion that therefore the suits are vexatious and are filed with a mala fide intention to get out of the judgment and decree passed by DRT.

13. As observed hereinabove, the plaintiffs are claiming right, title on the basis of the sale deeds dated 30.01.1996 and 10.03.1997 respectively executed by Shri Kallikutty as power-of-attorney holder of the original owner. However, according to the averments in the plaints, they have purchased the suit property from their vendor which is factually incorrect. On a bare reading of the sale deeds, it appears that the sale deeds are executed by Shri Kallikutty as power-of-attorney holder of the original vendor. As observed hereinabove, even in the year 2008, when the said Kallikutty filed interlocutory application before DRT to quash and set aside the ex parte judgment and decree passed by the DRT, he did not disclose that he has already sold the property in favour of the original plaintiffs. As observed hereinabove, even the sale consideration is alleged to have been paid in cash. Before the execution of the sale deeds dated 30.01.1996 and 10.03.1997, the lands were already put as a security by way of mortgage with the appellant bank by Shri Kallikutty.

14. Thus, considering the overall facts and circumstances of the case, the suits filed by the

original plaintiffs are vexatious, frivolous and nothing but an abuse of process of law and court. Therefore, considering the law laid down by this Court in the aforesaid decisions, more particularly in T. Arivandandam v. T.V.Satyapal [(1977)4 SCC 467], the suits being vexatious and frivolous, the plaints are required to be rejected in exercise of powers under Order 7 Rule 11 CPC. As pointed out by Krishna Iyer, J. in T.Arivandandam (supra), the ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the court while dealing with an application under Order 7 Rule 11(a). As observed by this Court, such proceedings are required to be nipped in the bud. Even otherwise as observed hereinabove, without exhausting the remedy of appeal provided under the RDDBFI Act, the suits with the basic relief of challenging the decree passed by the DRT were liable to be dismissed, as observed and held by this Court in O.C. Krishnan and others (supra).

15. At this stage, it is also required to be noted that the suits have been filed after a period of 15 years from the date of mortgage and after a period of 7 years from the date of passing of the decree by DRT. In the plaints, it is averred that the plaintiffs came to know about the mortgage and the judgment and decree passed by DRT only six months back. However, the said averments can be said to be too vague. Nothing has been averred as to when and how the plaintiffs came to know about the judgment and decree passed by DRT and the mortgage of the property. Only with a view to get out of the law of limitation and only with a view to bring the suits within the period of limitation, such vague averments are made. On such vague averments, plaintiffs cannot get out of the law of limitation. There must be specific pleadings and averments in the plaints on limitation. Thus, on this ground also, the plaints were liable to be rejected. As observed hereinabove, the plaints are vexatious, frivolous, meritless and nothing but an abuse of process of law and court. Therefore, this is a fit case to exercise the powers under Order 7 Rule 11 (d) CPC. Both the

courts below have materially erred in not rejecting the plaints in exercise of powers under Order 7 Rule 11(d) CPC. Both the courts below have materially erred in not exercising the jurisdiction vested in them.”

19. Based on the aforementioned decisions, respondent no.4-Bank has contended that any person is entitled to challenge the action taken by the Bank by making an application before the Debts Recovery Tribunal and Civil Courts have no jurisdiction to entertain the same and the trial court is justified in rejecting the plaint at the initial stage itself.

20. No doubt any person who is aggrieved of the action of the Bank under Section 13(4) of the SARFAESI Act can make an application before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act and the jurisdiction of the Civil Court is ousted as per the provisions of Section 34 of the SARFAESI Act and that 'any person' need not be a borrower or guarantor and can be any other person who is aggrieved by the action of the Bank. However, if the challenge is mainly to an action or transaction not covered under the provisions of the SARFAESI Act, in that event, the

jurisdiction of Civil Court is not ousted. In the instant case, the challenge is to the execution of the sale deed by the plaintiff in favour of defendant no.1 and consequential relief against the Bank is prayed for an action initiated by it under the provisions of Section 13(4) of the SARFAESI Act. The Debts Recovery Tribunal cannot try such a dispute.

21. It is further submitted by respondent no.4-Bank that the suit filed by the plaintiff is vexatious, frivolous and nothing but an abuse of the process of the Court; it is done only with a view to defeat the rights of the Bank; the suit is barred by limitation and the same is undervalued and on this ground alone, the plaint is liable to be rejected. It is noticed that though the said arguments have been canvassed by defendant no.4-Bank before the trial court, the trial court has not considered the said contentions and has rejected the plaint only on the ground that Civil Court has no jurisdiction to try the case.

22. For the reasons mentioned above, I am of the opinion that in the instant case, the jurisdiction of Civil Court is not

ousted. However, Civil Courts have to be extremely cautious while granting any interim order or judgment against the Bank and it should be awake to the fact that the plaintiff and defendant nos.1 to 3 might have filed the suit collusively to defeat the interest of the Bank. In the course of the trial, it is possible that defendant nos.1 and 3 may not appear at all or conduct themselves so as to support the case of the plaintiff to defeat the interest of the Bank. This fact has to be kept in mind by the trial court while appreciating the evidence produced before it in respect of any fraud that is alleged. Further, as the aspect of limitation and undervaluation of the suit is not examined by the trial court, the defendant no.4-bank is at liberty to again urge the said contentions and file such applications as it deems fit before trial court.

23. For the aforementioned reasons, the following order is passed:

**ORDER**

- (i) The appeal is allowed. The order dated 23.04.2019 passed by XXII Additional City Civil

and Sessions Judge, Bengaluru, on I.A.No.5 in O.S.No.3780/2017 is hereby set aside;

- ii) The Civil Court has the necessary jurisdiction to try the dispute on hand and consequently, the matter is remanded back to the trial court;
- (iii) Respondent no.4-Bank is at liberty to take any such contentions including on the ground of limitation, under valuation of the suit and that the suit filed is vexatious, frivolous and nothing but an abuse of the process of the Court and is at liberty to file suitable applications, if so advised, before the trial court;
- (iv) The parties are directed to appear before the trial court on *16<sup>th</sup> August 2021* without any further notice;
- (v) Office is directed to return the trial court records forthwith;
- (vi) No order as to cost.

Pending I.As. do not survive and they stand disposed of accordingly.

**Sd/-  
JUDGE**

hkh.