

(2014) 01 AP CK 0007

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 312 of 2013

Canara Bank

APPELLANT

Vs

Jetti Samba Siva Rao and Others

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13 13(4) 17 17(1) 17(2)

Citation : AIR 2014 AP 67 : (2014) 3 ALD 92 : (2014) 2 ALT 588 : (2014) 3 BC 698

Hon'ble Judges : R. Subhash Reddy, J;A.V. Sessa Sai, J

Bench : Division Bench

Advocate : Deepak Bhattacharjee, for the Appellant; N. Subba Rao, Advocate for Respondents 1 to 3 and Sri J. Prabhakar, Advocate, for the Respondent

Judgement

R. Subhash Reddy, J.—This civil miscellaneous appeal is filed under Order 43 Rule 1 of CPC by the 2nd defendant in the suit in O.S. No. 169 of 2011 pending on the file of the learned III-Additional District Judge, Prakasam at Ongole, aggrieved by order dated 06.02.2013, passed in I.A. No. 6 of 2013. Respondents 1 to 3 herein are plaintiffs in the aforesaid suit. They have filed the said suit for declaration of their title to the plaint schedule property and for consequential relief of permanent injunction restraining the defendants (i.e. respondent No. 4 and the appellant herein) from interfering with their possession and enjoyment of schedule property either by means of alienations or making the subject matter of said property towards recovery of loans said to have been advanced to the Managing partner of Venkata Ramana Fruit Processing Unit.

2. The appellant-Bank is a Nationalised Bank constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. It is having several branches all over India and one such branch is in Khammam District of Andhra Pradesh. M/s. Venkata Ramana Fruit Processing Unit, a partnership Firm, approached the appellant-Bank in the year 2010, for financial assistance for its

business, by offering its properties as primary security and offered the property of defendant No. 1 (respondent No. 4 herein) as collateral security, apart from other properties. The 1st defendant's son is a partner in the aforesaid partnership Firm. The 1st defendant submitted original registered sale deed, dated 01.07.1984, bearing document No. 2556 of 1984, registered in the office of Sub-registrar, Ongole, to the Bank and the Bank obtained report on 23.12.2010 through its panel Advocate regarding the clear and marketable title of the 1st defendant to the schedule property and it has also given a paper publication, dated 22.01.2011, indicating to accept such property as collateral security by way of mortgage to the loan sanctioned to M/s. Venkata Ramana Fruit Processing Unit, and as there were no objections, equitable mortgage was accepted by deposit of title deed bearing No. 2556 of 1984, dated 01.07.1984, and the memorandum of deposit of title deeds was registered with Sub-Registrar, Ongole on 25.01.2011, vide document No. 679 of 2011.

3. When M/s. Venkata Ramana Fruit Processing Unit became defaulter in repayment of loan obtained by them, the appellant-Bank initiated proceedings under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Securitisation Act") and issued demand notice and when they failed to pay the loan amount, the bank has taken possession of the mortgaged properties including the suit schedule property and gave paper publication on 21st of December 2012 in Eenadu daily newspaper, Prakasam District Edition, to that effect, through its authorized officer.

4. Respondents 1 to 3/plaintiffs, defendant No. 1 and one Sri Adinarayana are brothers, Jetty Pullaiah and Thirupathamma are their parents. It is the case of respondent/plaintiffs that along with their brother and parents, they have partitioned their properties by oral partition and subsequently incorporated in Ex. P-13 list of properties. It is their case that the land admeasuring Ac. 0-25 cents in Sy. No. 226 of Ongole, purchased under Ex. P-9 and the further extent of Ac. 0-25 cents in the same survey number purchased under Ex. P-10, were purchased out of the joint family funds and the same were partitioned into 5 equal parts by forming ridges from East to West and the same are incorporated in Ex. P-13 Memorandum of agreement, as such, the 4th respondent/defendant No. 1 has no exclusive right to mortgage such property to the appellant-Bank. Pleading there is title dispute as such the civil Court has jurisdiction, they approached the civil Court. Pursuant to taking possession by the petitioner-Bank under the Securitisation Act, when further steps are being taken to sell the property to recover the money due to them, they also filed an application for injunction to restrain the respondent/defendants from interfering with their possession and enjoyment either by means of alienation of the subject land or by taking steps for recovery of loans advanced to Venkata Ramana Fruit Processing Unit.

5. Respondent No. 4/defendant No. 1 and the appellant/defendant No. 2 have

contested the matter by filing separate counter affidavits. As per the averments in the counter filed before the trial Court, it was the case of respondent No. 4/defendant No. 1 that the said property, which is given as collateral security for the loan granted to Venkata Ramana Fruit Processing Unit, is exclusive property belonging to him and the claim of purchase under Exs. A-9 and A-10 from joint family funds was denied. Pleading that earlier there was a partition in the year 1970, it was the case of defendant No. 1 that he had absolute right over the said property.

6. Separate counter affidavit is filed by the petitioner pleading that the suit schedule property is given as collateral security for the loan sanctioned to M/s. Venkata Ramana Fruit Processing Unit and the said property which stood in the name of respondent No. 4/defendant No. 1 is accepted as collateral security. While pleading that it is the self-acquired property of respondent No. 4 herein and he was in exclusive possession and enjoyment of said property and further pleading that the alleged memorandum of partition agreement dated 20.03.1985, is a forged and fabricated one. It is further pleaded that the suit is bad for mis-joinder and non-joinder of proper parties as much as M/s. Venkata Ramana Fruit Processing Unit is a partnership Firm, which has become defaulter, is not made party. Further disputing the maintainability of the suit itself in view of the provision u/s 34 of the Securitisation Act, it is pleaded that they have alternative remedy by way of appeal under the provisions of the Securitisation Act.

7. In the interlocutory application, no oral evidence was let-in, but on behalf of respondent/plaintiffs, Exs. P-1 to P-61 were marked. The trial Court, having referred to the contentions advanced by the parties, has recorded a finding that as much as there is a clear title dispute between respondent No. 4 herein on one hand and respondents 1 to 3 on the other with respect to the property mortgaged to the appellant/defendant No. 2, has held that the suit for declaration of their right in respect of the property is maintainable. Further, referring to the documentary evidence on record, by relying on the memorandum of partition agreement Ex. P-13, which shows division of properties under Exs. P-9 and P-10 into five shares and further recording a finding that if temporary injunction is not granted, there is possibility of the appellate-Bank taking steps for sale of plaint schedule properties under the Securitisation Act, has granted temporary injunction as prayed for. As against the same, this civil miscellaneous appeal is filed.

8. Heard Sri Deepak Bhattacharjee, learned counsel for appellant-Bank and Sri N. Subba Rao, learned counsel for respondent/plaintiffs.

9. It is contended by Sri Deepak Bhattacharjee learned counsel for appellant-Bank that the appellant-Bank has advanced loan amount to M/s. Venkata Ramana Fruit Processing Unit and apart from mortgaging the properties of said Firm, the 4th respondent has given the suit schedule property as collateral security for the loan amount and the said property stands on his name. It is

submitted that son of 4th respondent is a partner in M/s. Venkata Ramana Fruit Processing Unit and when the said Firm has defaulted in repaying the loan amount, steps were taken under the Securitisation Act and the possession of secured assets was also taken. It is submitted that when they were taking steps for sale of said property to recover the loan amount, respondents 1 to 3 herein have filed the aforesaid suit by making false allegations and obtained injunction orders. It is contended by the learned counsel that in view of the provision u/s 34 of the Securitisation Act, Civil Court is not having any jurisdiction either to entertain the suit or to grant injunction orders restraining the appellant-Bank from taking action in pursuance of the power conferred under the said Act for recovery of debts. It is further contended that if the respondent/plaintiffs are aggrieved of the steps taken u/s 13(4) of the Securitisation Act, there is remedy of appeal u/s 17 of the Act to the Debts Recovery Tribunal having jurisdiction in the matter and without availing the remedy of appeal, by by-passing the same, respondents have approached the trial Court and inspite of bar of suit, the trial Court has granted injunction. It is submitted that in view of the provision u/s 35 of the Securitisation Act, the provisions of said Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force, and in that view of the matter, the trial Court should not have entertained the suit and passed the impugned order. The learned counsel, in support of his argument, placed reliance on the judgments of Hon''ble Supreme Court in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., and in United Bank of India Vs. Satyawati Tondon and Others,

10. On the other hand, it is submitted by Sri N. Subba Rao, learned counsel appearing for respondents 1 to 3 that the total extent of Ac. 0-50 cents of land covered by Exs. P-9 and P-10 was purchased with joint family funds and that Ex. P-9 was executed in favour of their father whereas Ex. P-10 was executed in the name of respondent No. 4/defendant No. 1. It is further submitted that as the suit property was purchased with joint family funds, same was orally partitioned into 5 equal parts forming ridges from East to West and the same is incorporated in the Memorandum of partition agreement under Ex. P-13, as such, respondent No. 4 had no exclusive right to mortgage such property to the bank. It is submitted that as much as there is title dispute between the brothers, the suit for declaration filed by them is maintainable. It is submitted that having regard to the nature of relief sought for, they cannot seek such relief by way of appeal before the appellate forum u/s 17(1) of the Securitisation Act. The learned counsel, in support of his argument, has placed reliance on the judgments of Hon''ble Supreme Court in Ramesh Chand Ardawatiya Vs. Anil Panjwani, , in Chheda Singh Vs. Town Area Committee, Akbarpur and Another, and in Sankalchan Jaychandbhai Patel and Others Vs. Vithalbhai Jaychandbhai Patel and Others,

11. Having heard learned counsel for the parties, we have also perused the material on record and some of the copies of documents which are marked before the trial Court.

12. M/s. Venkata Ramana Fruit Processing Unit is a partnership Firm which has taken financial assistance for its business purpose from the appellant-Nationalised Bank. As a security for the loans advanced, the said Firm has mortgaged its properties as a primary security and the 2nd defendant, who is the 4th respondent herein, has offered the property covered by registered sale deed dated 01.07.1984, bearing document No. 2556 of 1984 as a collateral security. From the counter affidavit filed by the Bank before the trial Court, it appears, before accepting such security of the 4th respondent, a paper notice was given inviting objections for mortgaging the suit schedule property, and as no objections were received, the Bank has accepted the security given by respondent No. 4 herein and created equitable mortgage vide document No. 679 of 2011, on 22.01.2011, by deposit of original title deed. The appellant-Bank claims charge over the property as a mortgagee until the entire loan amount is repaid. Although it is the case of respondent-plaintiffs that the said property is joint family property and the same was purchased with joint family funds and subsequently there was oral partition which was reduced into writing as memorandum of agreement under Ex. P-13, the same is denied by the 4th respondent, pleading that such document is a fabricated one. When the partnership Firm defaulted in paying the loan amount, steps were taken by the Bank under the provisions of the Securitisation Act and they have taken possession of such secured asset in exercise of power u/s 13(4) of the said Act. When further steps are being taken to sell such property to recover the loan amount, at that stage, respondents 1 to 3 herein have filed the suit and obtained injunction.

13. u/s 17 of the Securitisation Act, against the measures taken under sub-section (4) of Section 13 of the Act, there is remedy of appeal to the Debts Recovery Tribunal. Such appeal is provided not only to the borrower, guarantor, but any person aggrieved of the measures referred to in sub-section (4) of Section 13 of the Act can avail the remedy of appeal. Further, u/s 34 of the Act, there is a bar from approaching the civil Court by way of Suit. The said provision u/s 34 of the 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).

Further, Section 35 of the Act reads as under:

35. The provisions of this Act to override other laws:-

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any

instrument having effect by virtue of any such law.

14. In *Mardia Chemicals Ltd. Vs. Union of India* (1 supra), relied on by the learned counsel for appellant-Bank, the Hon'ble Supreme Court has elaborately considered the scope of provisions under Sections 13, 17 and 34 of the Securitisation Act and held that with regard to steps taken u/s 13(4) of the said Act, there is a bar provided u/s 34 of the Act from approaching the civil Court. Further, interpreting the provision u/s 17 of the Securitisation Act and the nature of proceedings therein, it is held that in fact, it is not an appellate proceeding, but rather an initial action which is brought before a forum prescribed under the 2002 Act, and is like a suit in CPC in the Courts of first instance.

15. In another judgment relied on by the learned counsel for appellant in *United Bank of India Vs. Satyawati Tondon* (2 supra), the Hon'ble Supreme Court has held in para 36, as under:

36. We have heard the learned counsel for the appellant and perused the record. Normally, this Court does not interfere with the discretion exercised by the High Court to pass an interim order in a pending matter but, having carefully examined the matter, we have felt persuaded to make an exception in this case because the order under challenge has the effect of defeating the very object of the legislation enacted by Parliament for ensuring that there are no unwarranted impediments in the recovery of the debts, etc., due to banks, other financial institutions and secured creditors.

16. If the objects and reasons for enacting the Securitisation Act are looked at, the said Act is brought into force to enable the banks and financial institutions to realize long-term assets, manage problems of liquidity, asset liability mis-match and improve recovery by exercising powers to take possession of securities and sell them and reduce the non-performing assets by adopting measures for recovery or reconstruction. Coming to the facts of the case on hand, it is to be noticed that the property which is the subject matter of security, is covered by registered sale deed standing in the name of respondent No. 4. His case is that respondents 1 to 3, who are plaintiffs, have no share at all in the said property. The whole claim of respondent No. 4 is based on documentary evidence under Ex. P-13 Memorandum of agreement, which is stated to have been a fabricated one as per the claim of respondent No. 1. Although it is contended by the learned counsel for respondents 1 to 3/plaintiffs that as the suit is for declaration of title and in view of the civil nature of dispute it is only for the civil Court to decide the same, it is to be noticed that with regard to the steps taken by the appellant-Bank in exercise of powers u/s 13(4) of the Act, validity of such steps can definitely be looked into by the authority u/s 17(2) of the Securitisation Act. When possession is taken u/s 13(4) of the Act, even if taking such possession is illegal, it is for respondents 1 to 3/plaintiffs to approach the authority u/s 17 of the Act, more particularly, in view of the bar u/s 34 of the Act, this Court is of the prima facie view that the suit itself is not maintainable. In any event, as the very ground for grant of injunction is based on Ex. P-13 and in view of the

judgment of the Hon''ble Supreme Court in United Bank of India Vs. Satyawati Tondon (2 supra), such injunction cannot be allowed to be continued. As held by the Hon''ble Supreme Court, if such injunction as granted by the trial Court is allowed to stand, it will defeat the very object of the legislation enacted by Parliament for ensuring that there are no unwarranted impediments in recovery of debts, etc., due to banks, other financial institutions and secured creditors.

17. Though the learned counsel for respondents Sri N. Subba Rao has placed reliance on the judgments of Hon''ble Supreme Court in Ramesh Chand Ardawatiya Vs. Anil Panjwani (3 supra), Chheda Singh Vs. Town Area Committee, Akbarpur & another (4 supra) and in Sankalchan Jaychandbhai Patel & others Vs. Vithalbhai Jaychandbhai Patel & others (5 supra), a perusal of the said judgments shows that they would not render any assistance in support of his argument, whereas, the judgments in Mardia Chemicals Ltd. Vs. Union of India (1 supra) and United Bank of India Vs. Satyawati Tondon (2 supra) fully support the case of appellant to accept the bar u/s 35 and also the overriding effect of the provisions of the Securitisation Act given u/s 35, coupled with the remedy provided to the aggrieved parties u/s 17(2) of the Act. For the aforesaid reasons and in view of the provisions referred above, this Court is of the view that it is a fit case to allow the appeal by setting aside the orders of injunction granted by the trial Court. Accordingly, the CMA is allowed and the order dated 06.02.2013, passed in I.A. No. 6 of 2013 in O.S. No. 169 of 2011 pending on the file of the learned III-Additional District Judge, Prakasam at Ongole, is set aside. Consequently, the said I.A. stands dismissed. No order as to costs.

Miscellaneous applications pending, if any, shall stand closed.