(2006) 12 MAD CK 0025

In the Madras High Court

Case No : CRP (PD) No. 1452 of 2006 and MP. No. 2 of 2006

P. Rajendran APPELLANT

Vs

S. Ammaniammal and S.P. Chenniappa Gounder RESPONDENT

Date of Decision : 13-12-2006

Acts Referred:

Evidence Act, 1872 — Section 114
Income Tax Rules, 1962 — Rule 41, 42
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 24

Citation : (2006) 12 MAD CK 0025

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : R. Sivakumar, for the Appellant; P. Valliappan, for the Respondent

Judgement

S. Ashok Kumar, J.—As against the order passed by the learned Subordinate Judge, Erode, staying the injunction granted by the learned District Munsif, Perundurai, the petitioner/plaintiff has preferred this revision.

2. The suit has been filed by the revision petitioner against the respondents herein and one Senniappan for permanent injunction restraining them from in any manner interfering with his peaceful possession and enjoyment of the suit property. According to the petitioner the suit properties are non residential properties and belonged to the first respondent/first defendant and one S. Senniappan who is the third defendant in the suit. The second respondent is the husband of the first respondent. The third defendant S. Senniappan and one Ravi were partners in a firm M/s. Maker Exports, which firm obtained loans from Dhanalakshmi Bank Ltd., Tiruppur in the year 1994 and the suit properties were shown as securities for the repayment of the loan. The first respondent was the co-applicant for the loans advanced to the said firm and the first respondent and the third defendant executed an equitable mortgage of their properties in favour of the Bank. The Bank filed O.A. No. 277 of 2000 before the Debt Recovery Tribunal-I, Chennai, renumbered as O.A. No. 834 of 2001 before the DRT-II,

Chennai against the said firm for recovery of its dues to the tune of Rs. 1,15,81,537/- and the same was transferred to the DRT, Coimbatore in T.A. No. 729 of 2002. Though all the defendants entered appearance, but they non prosecuted and therefore they were set ex parte and consequently the application was allowed on 26.10.2004 and the Bank obtained the decree for Rs. 3,27,92,564/-. The properties were brought for sale in RP. No. 22/2005 by the DRT and one K. Duraisamy who was the tenant of the respondents and was doing business in the suit properties since 200 has purchased the same for a sum of Rs. 33,07,000/- in the auction sale held on 8.12.2005 and sale certificate was issued by the Recovery Officer of the DRT and the sale was confirmed on 8.2.2006 after two months from the date of sale and thus the sale was made absolute and possession certificate was also given by the DRT on 20.2.2006. the sale certificate was duly registered as Document L. No. 1/2006 in the Sub Registrar office at Uthukuli.

3. The auction purchaser K. Duraisamy while he was the tenant in the suit property filed O.S. No. 238/2005 on the file of the District Munsif, Perundurai for permanent injunction and the suit was decreed on 31.10.2005. Thus the tenant was in continuous possession from the date of tenancy in the year 2000 and particularly when he purchased the property in the auction sale held by the DRT and on subsequent dates when the sale was confirmed and possession certificate was issued.

4. The said auction purchaser sold the properties to the petitioner on 3.4.2006 for a consideration of Rs. 33,10,000/- and the same was duly registered and eversince the date of purchase the petitioner is in possession of the suit property. However, since the respondent tried to disturb the peaceful possession of the petitioner, he filed the present suit in O.S. No. 135 of 2006 and also filed I.A. No. 444 of 2006 for interim injunction.

5. The first and second respondents filed a counter stating that the third defendant without the knowledge of them created an equitable mortgage by depositing the title deeds with the said Dhanalakshmi Bank and the properties were sold in public auction and they came to know about all these things just prior to two three months only and they have lodged a police complaint in Cr. No. 73/2006 against the third defendant, auction purchaser, the petitioner and the Bank. They also field Appeal No. 4 of 206 before the DRT, Coimbatore against the recovery proceedings and the sale order given by the recovery officer was stayed. The auction purchaser filed appeal against that order before the DRAT, Chennai in Appeal NO. 181 of 206 and it was dismissed and hence the auction sale proceedings of the recovery officer of the DRT are not enforceable. They have also taken steps to set aside the exparte decree passed in O.S. No. 238 of 2005 obtained by the tenant cum auction sale purchaser.

6. The first and second respondents filed additional counter affidavits and came up with a new story that the third defendant has forged the signature of the first defendant in all the loan documents as well as the mortgage documents

executed with the Bank and he played fraud on the first respondent and she never stood as a guarantor for the repayment of loan by the third defendant and his firm namely M/s. Maker Exports. The petitioner marked Exs. A. 1 to A. 12 and the respondents marked Exs. B. 1 to B. 27 and no oral evidence was let in by both sides. Meanwhile the auction purchaser has filed WP. No. 17940/2006 before the first Bench of before the First Bench of this Court and it stayed the stay order given by the DRT and DRAT and thus the sale certificates issued by the Recovery Officer of the DRT is now in order.

7. According to the learned Counsel for the revision petitioner the respondents are not in possession of the suit property from the year 2000, the contention of the respondents that they were not aware of the mortgage of the properties, public auction sale for the past 14 years is highly unbelievable. The story that the documents were stolen by the third defendant is also unbelievable. Ex. P. 12 clearly says that the first respondent''s admitted signatures and signatures in the loan documents are compared and found to be the same. However, in CMA.35 of 2006 the learned Principal Sub Judge Erode stayed the operation of the injunction granted by the learned District Munsif. Though the second respondent''s name (S. Senniappan) was shown in the CMA and I.A., but for obvious reasons his name was strike down by the respondents in the I.A., alone and the learned Subordinate Judge also accepted the same and completed the hearing inspite of the strong objections of the petitioner. The learned Prl. Subordinate Judge holding that the possession of the auction sale purchaser is symbolic possession only and the respondents only are having legal right to hold possession and they are in possession of the same erroneously stayed the injunction granted by the trial court.

8. Learned Counsel for the respondents contended that the third defendant fraudulently obtained or forged the signatures of the first respondent in the loan documents and mortgage documents and obtained loans from the Bank in the years from 1994 to 1997 and now only they came to know these things and lodged police complaint. According to her, she never executed any documents and obtained loans from the bank. Moreover the possession given by the recovery officer on 20.2.2006 to the auction sale purchaser is symbolic possession and legally the respondents are in possession of the properties. According to the first respondent she never stood as a co applicant for the partnership concern and she never received any summons or notice from the DRT or engaged any counsel to enter appearance in the said proceedings. The petitioner cannot derive more than what his vendor, the auction sale purchaser was alleged to have. Further, the suit as framed is not maintainable as per Section 24 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 read with Rule 41 and 42 of the II Schedule of the Income Tax Act Rules 1962 and without any full-fledged trial in O.S. No. 135 of 2006, the petitioner is not entitled to any relief.

9. But a perusal of the trial court''s order would show that it is highly

unbelievable to contend that the first respondent came to know of the mortgage executed by the third defendant only in the year 1994. Admittedly the loans were disbursed from 1994 to 1997 on different spells. From Ex. B. 22 it was also made clear that the admitted signature of the first respondent tallied with the signatures found in the various documents executed to the Bank. Therefore the first respondent''s contention that her signatures were forged cannot be appreciated. Further the petitioner is a bona fide purchaser for valuable consideration of the property sold in public auction sale by the Debt Recovery Tribunal, Coimbatore, which property was brought for sale to settle the dues of the Bank. Only in the year 2005 they have taken steps to set aside the original ex parte decree for the alleged fraud committed upon them by the third defendant. Even if they succeed in the said suit, according to the learned counsel, since the sale certificate has been issued and the entire process is over and the auction purchaser has also deposited the money in the court, it is only the Bank is answerable to the first respondent and at any cost the respondents cannot disturb the auction sale purchaser.

10. More over the tenant who was doing business in the property from the date of his tenancy in the year 2000 himself has purchased the property in the auction sale held on 8.12.2005 and he continued to be in possession of the same till the date of sale i.e., 3.4.2006 to the petitioner. Hence all along fro the date of tenancy, the auction purchaser only was in possession till the date of sale to the petitioner. As regards the contention that only symbolic possession was given to the auction purchaser, even assuming for argument sake, as and when the properties were sold in auction to recover the loans given by the Bank, the judgment debtor has no right to squat on the ground that symbolic possession only was given. The respondents have no title over the property as on the date of completion of auction sale proceedings and they have not taken steps to file any appeal against the order decree passed by the DRT instead, only challenging the recovery proceedings only.

11. In the case on hand injunction was earlier granted by the civl court in O.S. No. 238/05, a suit filed by the auction purchaser, against the respondents and hence they were not in possession of the property ever since the date of tenancy from the year 2000. Further, the competent recovery officer of the DRT has confirmed the sale on 8.2.2006 and possession certificate was also given to the auction purchaser on 20.2.2006 and such acts cannot be challenged on mere allegations as there is always the presumption u/s 114 of the Evidence Act that officials acts are performed regularly as has been held by this Court in 2006 (4) LW. 276 O.K. Muniyan and Ors. v. Govinda Chettiar and Ors. All the more the judgment debtor cannot question the title of the auction sale purchaser. Thus the two ingredients for grant of ad interim injunction viz., legal right to hold the property and its physical possession are proved and therefore no infirmity could be attached to the grant of ad interim injunction by the trial court.

12. In Janak Raj Vs. Gurdial Singh and Another, , the Hon''ble Supreme Court

held as follows:

...the auction purchaser is entitled to confirmation of the sale notwithstanding the fact that even if the original decree is set aside. The Policy of the Legislature seems to be that unless a stranger auction purchaser is protected against the vicissitudes of the fortunes of the suit, sales in execution would not attract customers and it would be to the detriment of the interest of the borrower and the creditor alike if sales were allowed to be impugned merely because the decree was ultimately set aside or modified.

The above decision would make it clear that even if the owner of the property succeeds in some way and get the decree reversed, then also the auction purchaser''s right cannot be questioned and it has to be protected.

13. In 2006 (4) MLJ 33 (Times Guarantee Ltd. v. Branch Manager, IDBI, Chennai) this Court also held that,

sanctity should be attached to the auction sale conducted for recovery of debt due to the Banks and Financial Institutions. If such sales are disputed in courts for extraneous reasons, the intending purchasers would be forced to think twice before participating in the auction sales as they would be purchasing litigation...The order the court should not prejudice the interest of the parties...The well established maxim of law is that ''actus curie nemenim gravabit''.

14. In the instant case as well, on the writ petition in WP. No. 17940/2006 filed by the auction purchaser, challenging the confirmation of stay granted in Appeal Nos. 181/2006 and 4/2006, passed by the Debt Recovery Appellate Tribunal, Chennai, the First Bench of this Court suspended the order of stay granted by the DRAT and thus the sale certificate issued by the Recovery Officer has been restored and there is no impediment in the eye of law for the continuance of the possession by the revision petitioner as long as final decision is arrived at in the pending Writ Petition before the First Bench of this Court.

15. In the result, the order passed in I.A. No. 290 of 2006 in CMA. No. 35 of 2006 passed by the appellate court is set aside and consequently the order passed in I.A. No. 444 of 2006 in O.S. No. 135 of 2006 by the trial court is restored. Consequently, connected Miscellaneous Petition is closed. No costs.