

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 22<sup>nd</sup> DAY OF NOVEMBER 2013

PRESENT

THE HON'BLE MR. JUSTICE K.L.MANJUNATH  
AND  
THE HON'BLE MR. JUSTICE A.V.CHANDRASHEKARA

**R.F.A. NO.1687/2012**

**BETWEEN :**

Smt.Atheeqa Begum,  
W/o.Sri.Abdul Lateef Khan,  
Aged about 62 years,  
R/at # 42, Lubbay Masjid  
Street, Shivajinagar,  
Bangalore - 1.

...APPELLANT

(By Sri.P.S Shameel Ahmed &  
Sri.M.L.Dayanand Kumar, Advs.)

**AND :**

1. Indian Bank,  
Overseas Branch,  
Manandi Plaza,  
No.2, St.Marks Road,  
Bangalore - 1  
By its Authorised Officer.
2. M/s.Fresco Foods Pvt. Ltd.,  
Having its Regtd Office at  
No.18/1, Albert Street,  
Richmond Town,  
Bangalore - 25  
By its Director  
Sri.Saad Anees.

3. Sri.Saad Anees  
S/o.Sri.Anees-Ur-Rahman,  
Aged about 30 years,  
R/at No.18/1, Albert Street,  
Richmond Town,  
Bangalore – 25.

4. Sri.Annes-Ur-Rahman,  
Aged about 58 years,  
R/at No.18/1,  
Albert Street,  
Richmond Town,  
Bangalore.

...RESPONDENTS

(By Sri.Vijay Kumar V., Adv. for R1,  
Sri.N.Krishnamurthy, Adv. for R2 to R4)

. . . . .

This R.F.A is filed under Section 96 of CPC, against the orders dated 07.09.2012 passed in O.S.25476/2012 on the file of the XXVIII Addl. City Civil Judge, Mayo Hall, Bangalore, allowing the application under Order 7, Rule – 11(a) of CPC.

This R.F.A. having been heard and reserved for judgment, coming on for *pronouncement of orders*, this day, **A.V.Chandrashekar. J.**, delivered the following:

### **JUDGMENT**

This appeal is directed against the order passed by the learned XXVIII Addl. City Civil Judge, Mayo Hall, Bangalore, on 07.09.2012 under Order 7 Rule 11(a) of CPC in O.S. No.25476/2012. The application filed by the 1<sup>st</sup> defendant for rejection of plaint on the ground

that the suit is expressly barred by statute has been allowed and consequentially, the plaint has been rejected. It is this order, which has been questioned on various grounds in this appeal.

2. The appellant is the plaintiff in the said suit. The 1<sup>st</sup> respondent is the Indian Bank on whose application plaint has been rejected. The 2<sup>nd</sup> defendant is a Business Unit owned by the 3<sup>rd</sup> defendant. The 4<sup>th</sup> defendant is the father of the 3<sup>rd</sup> defendant.

3. Parties would be referred to as plaintiffs and defendants 1 to 4 as per their status in the Trial Court.

4. The plaintiff is the sister of the 4<sup>th</sup> defendant. The suit property bears No.18 situated at Albert Street, Richmond Town, Civil Station, Bangalore measuring East-West 68 feet and North-South 48 feet. The property in question had fallen to the share of Smt.Karimunnisa, the mother of the 4<sup>th</sup> defendant, vide registered partition deed dated 05.02.1976. According to the plaintiff, her mother Karimunnisa had gifted half share in the schedule property in her favour through an

oral gift on 11.03.1982 and since then she has been the absolute owner. According to her, the property in question had been handedover to the 4<sup>th</sup> defendant, who is her brother to reside along with his family members. According to the plaintiff, this was done, as her relationship with her brother was very cordial. She was under the bonafide intention that he would look after the property in the best interest of the plaintiff.

5. She was surprised when she visited the suit property in the first week of February 2012. She was shocked to see that a Possession Notice had been pasted on the suit schedule property by the 1<sup>st</sup> defendant on the ground that the possession had been taken over as per the provisions of the SARFAESI Act for recovery of a sum of Rs.12,05,86,621.18ps. Immediately, she sent a notice to the 3<sup>rd</sup> defendant in this regard and the 3<sup>rd</sup> defendant sent a copy of the Trust Deed stated to have been executed by her mother in favour the 3<sup>rd</sup> defendant, who is the son of the 4<sup>th</sup> defendant. After looking into the Trust deed, she came to know that her mother has created a Trust in favour

of the 3<sup>rd</sup> defendant as a sole beneficiary and the 4<sup>th</sup> defendant was a Trustee. In view of her hostile attitude, she was left with no other avenue except to file a suit before the Court for a direction to the 1<sup>st</sup> defendant to withdraw the possession notice dated 13.01.2012 in respect of the suit property and also declare that the Trust deed dated 05.02.1983 does not bind her and for separate possession of her half share.

6. The 1<sup>st</sup> defendant has chosen to file a detailed written statement stating that the land originally belonged to Karimunnisa, the mother of the 4<sup>th</sup> defendant. The averment that half share in the property in question has been gifted in favour of the plaintiff in the year 1982 and that she had allowed her brother to reside in the house has been specifically denied. According to the 1<sup>st</sup> defendant, the property in question is the subject matter of a Trust created in favour of the 3<sup>rd</sup> defendant by making 4<sup>th</sup> defendant as the Trustee and that the 3<sup>rd</sup> defendant had availed loan on the strength of the suit schedule property. As the amount was huge and the arrears were not paid, the Bank had

to invoke the provisions of the SARFAESI Act, 2002 and take possession. The suit is stated to be not maintainable either in law or on facts and is expressly barred under Sections 17 and 34 of the Securitization Act and hence, requested to dismiss the suit.

7. At this stage, an application came to be filed under Order 7 Rule 11(a) of the CPC by the 1<sup>st</sup> defendant reiterating the facts as stated in the written statement. After hearing the learned counsel appearing for the parties, the following points arise for our consideration at the time of argument:

1. *Whether the learned Judge is justified in rejecting the plaint invoking Order 7 Rule 11(d) of CPC?*
2. *Whether the suit appears from the statement in the plaint to be barred by any law?*

8. It is useful to refer to Section 9 of CPC also at this juncture. Under Section 9 of CPC, the Civil Court has the jurisdiction to try all suits of a Civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

9. The plaint filed under Order VII Rule 1 of CPC in O.S. No.25476/12 discloses that the plaintiff came to know of a Possession Notice affixed on the suit schedule property by the 1<sup>st</sup> defendant, when she went near the property in the first week of February 2012. Therefore, it is clear that she had known the contents of the Possession Notice affixed on conspicuous part of the suit schedule property. The plaintiff herself has produced a Xerox copy of the said Possession Notice, which is in Appendix-IV as per Rule 8(1) of SARFAESI Act, 2002. The said notice specifically discloses that the Authorized Officer of Indian Bank, Overseas Branch had been conferred with powers under Section 13(12) of the SARFAESI Act read with Rules 8 and 9 of the of the Security Interest (Enforcement) Rules, 2002 and in exercise of the said power, a demand notice had been issued against the 2<sup>nd</sup> defendant of which, the 3<sup>rd</sup> defendant is the Proprietor, for Recovery of a sum of more than Rs.12 crores with interest thereon from 07.10.2011. In spite of the demand notice issued to the 2<sup>nd</sup> defendant and 3<sup>rd</sup> defendant to pay the dues, the

same was not paid and hence, possession was taken over by the Authorized Officer under Sub-Section (4) of Section 13 of Securitization Act, 2012. This is one of the coercive steps taken by the Authorized Officer of the 1<sup>st</sup> defendant – Bank to recover the amount due to it from defendants 2 and 3.

10. It is relevant to look into Sections 17 and 34 of SARFAESI Act, 2002. As per Sub-Section (1) of Section 17 any person including the borrower who is aggrieved by any of the measures referred to in Sub-Section (4) of Section 13 taken by the secured creditor or his authorized officer may make an application to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which such measures had been taken. A specific remedy is provided under Sub-Section (1) of Section 17 to any person aggrieved by such a coercive measure. Section 34 of SARFAESI Act specifically ousts the jurisdiction of the Civil Court entertaining a suit or proceedings in respect of any matter, which the Debt Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to



determine the same. It is further made clear that 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. Hence, there is a clear statutory bar to entertain a suit of this nature.

11. On a conjoint reading of both Sections 17 and 34, it is very clear that the Authorized Officer of the 1<sup>st</sup> defendant – Bank has initiated recovery proceedings and in this regard possession has been taken over and that has been notified by affixing the notice in Appendix – IV on the conspicuous part of the suit property. What is argued before this Court is that the Civil Court had jurisdiction to declare the Trust deed dated 05.02.1983 is not binding on the plaintiff and for consequential relief of partition and separate possession of her half share based on an oral gift stated to have been made in her favour by her mother on 11.03.1982. But it is evident that the first and the main relief sought for in the suit is for a direction to the 1<sup>st</sup> defendant to withdraw the Possession Notice dated 13.01.2012.

Though other reliefs vide paragraph 18(b) to (e) are sought, the main relief is one for withdrawal of the Possession Notice affixed as per the provisions of SARFAESI Act.

12. The documents produced by the very plaintiff would disclose that the property in question originally belonged to her mother and that she had created a Trust for the benefit of the 3<sup>rd</sup> defendant, who is her grandson, with the 4<sup>th</sup> defendant as the Trustee. As per the contents of the registered Trust Deed, the 3<sup>rd</sup> defendant has become the absolute owner after attaining majority and it is no more under the Trusteeship of the 4<sup>th</sup> defendant. The suit schedule property has been mortgaged by the defendants 2 and 3 in favour of the 1<sup>st</sup> defendant for availing loan and the said loan has not been repaid as a result of which, coercive action has been taken by the Authorized Officer of the 1<sup>st</sup> defendant – Bank under the relevant provisions of the SARFAESI Act, 2002. These are evident from the very documents filed by the plaintiff which are part of plaint. Thus, the jurisdiction of the

Civil Court is barred and hence, the learned Judge has rightly rejected the plaint invoking Sub-Rule (d) of Order VII Rule 11. We do not find any infirmity or illegality in the approach adopted by the learned Judge in rejecting the plaint. Hence, it needs to be affirmed by rejecting the plaint. Hence, we pass the following order:

The appeal filed under Order 96 of CPC for rejection of the order made on 07.09.2012 in O.S.No.25475/2012 on the file of the XXVIII Additional City Civil Judge, Mayo Hall, Bangalore is **dismissed**. The impugned order is confirmed.

Parties to bear their own cost.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

**SPS**

*This is a Print Replica of the raw text of the judgment as appearing on Court website.*

*Publisher has only added the Page para for convenience in referencing.*