IN THE DEBT RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 19th day of May, 2026

PRESENT: HON'BLE MR. JUSTICE G. CHANDRASEKHARAN
CHAIRPERSON

RA (SA) No.165/2012
(arising out of SA No.119/2008 on the file of DRT-II, Chennai)

Between

1. P. Mageshkumar

2. Mrs. Asha Karthikeyan

Both are at:

Flat No.A, 1 Block, Balaji Apartments,
2nd Street, Ekkattuthangal,
Chennai 600 093.

....Appellants

And

1. Chief Manager/Authorised Officer,
Bank of Baroda,
(Erstwhile Dena Bank)
George Town Branch,
No.340, Mint Street,
Chennai 600 079.

(amended as per order dated 23.10.2020 in IA No.976/2019)

2. Mr. T.M. Varadarajan,
S/o T. Munusamy,
No.3/1, Sivan Koil South Street,
Kodambakkam, Chennai 600 024.

(impleading as per order in IA 750/2025 dated 23.10.2025)

.....Respondents

Counsel for Appellants : M/s K.J. Parthasarathy & Co.
Counsel for R1 Bank : M/s R. Ramasubramaniam Raja & Co

R2 remained *ex parte*.

ORDER

1. Aggrieved against the order of the Learned Presiding officer, DRT-II, Chennai dated 27.11.2009 passed in SA No.119/2008, appellants, who lost their case before DRT, filed this appeal under Section 18 of the SARFAESI Act.

2. Brief facts leading to filing of aforesaid SARFAESI application are that, appellants are the joint owners of the property concerned in this case, by virtue of purchase from one Akbar Ali and Ms. Jarina Begam for a valid consideration through registered Sale Deed dated 16.6.2006. Possession Notice dated 17.10.2008 was pasted on the outdoor of the appellants' premises. Appellants came to know from the notice that one Mr. T.M. Varardharajan and Smt. Mahalakshmi availed loan from the erstwhile respondent bank viz., Dena Bank and Mr. E.T. Balaraman was the guarantor for the loan so availed. The borrowers had obtained loan facilities from the respondent bank on the basis of some bogus documents. Appellants on the basis of their title deeds availed loan

facility from the Bank of Maharashtra. When appellants have valid right and title over the subject property, sale of the property by the first respondent bank to the second respondent on the basis of proceedings initiated against the property of the appellants is illegal. Therefore, SA No.119/2008 was filed to stop all further proceedings pursuant to the Possession Notice dated 17.10.2018, auction sale, etc.

3. Learned Presiding Officer dismissed the SA on the ground that since issue involved in this case relates to title and interest over the property between two persons and that issue cannot be decided by the DRT. It was also found that there is no evidence produced to show that bank committed any irregularity and it followed the mandatory provisions while taking recourse under Section 13(4) of the SARFAESI Act. Thus, this appeal.

4. Learned Counsel for the appellants submitted that appellants are neither borrowers nor guarantors, but, are absolute owners of the subject property and they are third party to the '*Lis*' involved in this case in the SARFAESI proceedings initiated by the first respondent bank against the second respondent.

5. It is further submitted that the property was originally owned by one Mr. Robert Rajasekaran, who executed a registered Power of Attorney deed in favour of one Mr. A.M. Nazeer. On the basis of the said power of attorney deed, he sold the property to Mr. Akbar Ali and Ms. Jarina Begam through registered sale deed dated 4.10.2004. Thereafter, the said Mr. Akbar Ali and Ms. Jarina Begam sold the property to the appellants on 16.6.2006. Appellants availed loan from Bank of Maharashtra by creation of equitable mortgage over their property on 6.9.2006.

6. It is further submitted that after executing power of attorney deed in favour of Mr. Nazeer, Mr. Robert Rajasekaran appears to have sold the property to Mr. T.M. Varadarajan on 25.11.2004 and on that basis, Mr. T.M. Varadharanan viz., the second respondent availed loan from erstwhile Dena Bank, which later got merged with Bank of Baroda and mortgaged the property on 29.12.2004.

7. It is his further submission that property was validly sold by the power agent of Mr. Robert Rajasekaran to Akbar Ali and Ms. Jarina Begam. Mr. Robert Rajasekaran has no right to sell the property to Mr. Varadarajan subsequent to the sale of Akbar Ali and Ms. Jarina Begam. Therefore, the sale held in favour of Mr. Varadarajan is illegal and invalid and on that

basis the loan sanctioned to Mr. Varadarajan, security interest created in favour of first respondent bank and the SARFAESI measures initiated by the first respondent are all illegal, invalid and liable to be set aside. Measures taken under the SARFAESI Act can be challenged only before DRT and not before a Civil Court. Therefore, finding of the Learned Presiding Officer that since there is an issued of title involved, only a Civil Court has jurisdiction is not correct. In support of this proposition, learned counsel pressed into service the decision of Hon'ble High Court of Madras in re**, V. Thulasi Vs. Indian Overseas Bank reported in 2011 (3) CTC 801.** For the same proposition, decision of Hon'ble Supreme Court of India in re, **Jagdish Singh Vs. Heeralal and others reported in (2014) 1 SCC 479** is relied. It is useful to refer para 23 and 24 of the decision of Hon'ble Supreme Court of India, for better understanding.

"23.Section 13, as already indicated, deals with the enforcement of the security interest without the intervention of the court or tribunal but in accordance with the provisions of the Securitisation Act.

24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or

realizing the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well."

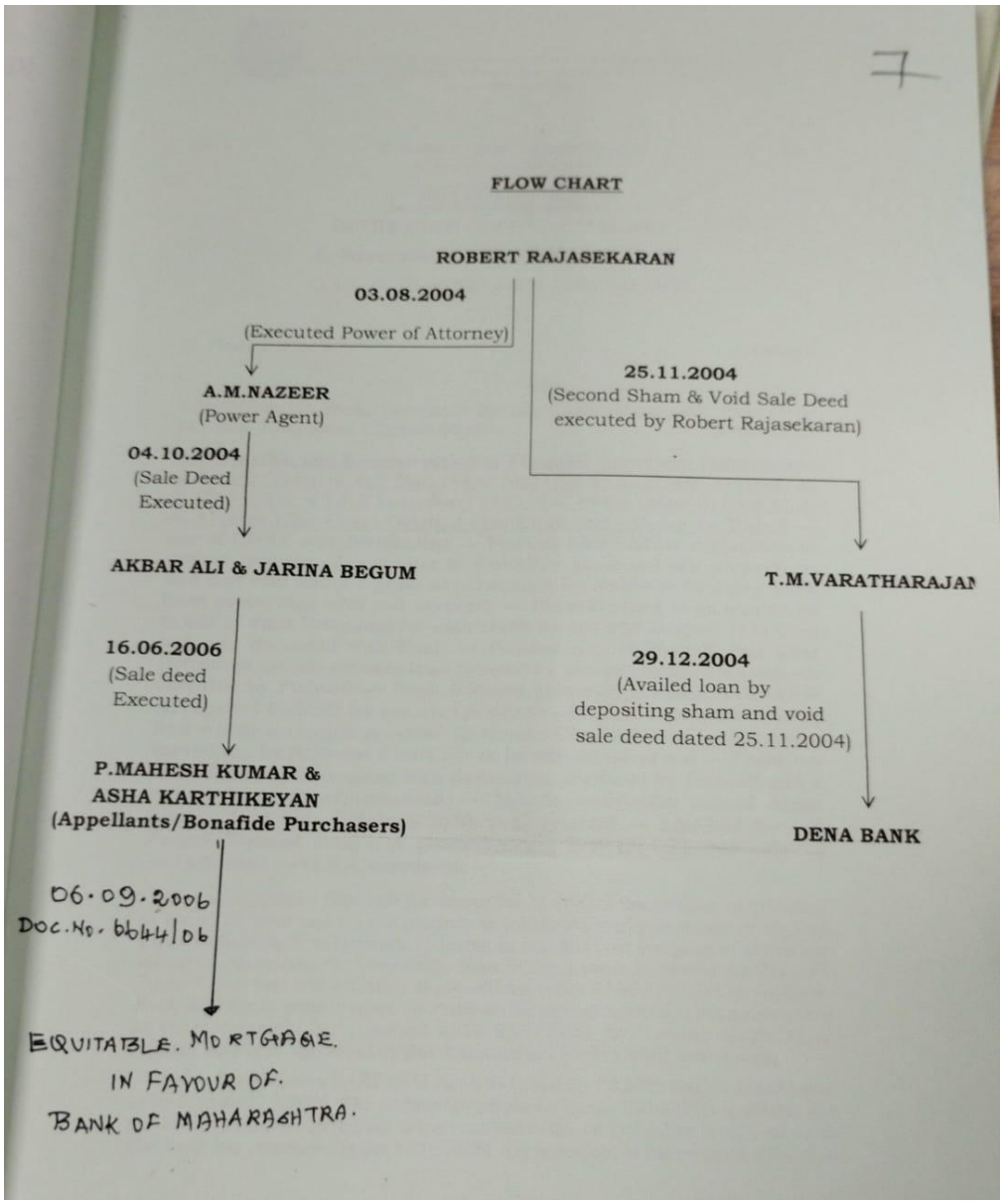
8. In reply, learned counsel for the first respondent bank submitted that appellants purchased the subject property only on 16.6.2006. However, prior to their purchase, second respondent viz., Mr. T.M. Varadarajan purchased the property on 25.11.2004. Appellants were aware of the sale in favour of the Mr. T.M. Varadarajan and despite that they proceeded to buy the property. Therefore, appellants cannot be considered as bona fide litigants entitled to challenge the SARFAESI measures initiated by the

bank for recovery of the loan due from the second respondent viz., Mr. T.M. Varadarajan.

9. Learned counsel mainly focused on the submission that since there is an issue of title involved between the second respondent and the appellants, only Civil Court is entitled to decide the issue and not DRT. That is why, learned Presiding Officer dismissed the SA. That apart, there is no procedural violation in the initiation of the measures under Section 13(4) of the SARFAESI Act. So saying, learned counsel for the respondent bank prayed for dismissal of the appeal. In support of this submission, learned counsel for the first respondent bank pressed into service the decision of Hon'ble Supreme Court of India in re, Central Bank of India Vs. Prabha Jain and others reported in (2025) 4 SCC 38.

10. I have considered the rival submissions and perused the records.

11. Appellants filed flow chart in their written submissions to show the flow of title from Mr. Robert Rajasekran. This flow chart will enable us to understand that same property was sold to two persons. For better understanding, the flow chart is produced here.



12. This flow chart shows that the owner Mr. Robert Rajasekaran executed power of attorney deed in favour of Mr. A.M. Nazeer on 3.8.2004. Mr. A.M. Nazeer, in turn, sold the property to Mr. Akbar Ali and Ms. Jarina Begam on 4.10.2004. They, in turn, sold the property to the appellants on 16.6.2006 and appellants created equitable mortgage in favour of Bank of Maharashtra by deposit of title deeds to secure the loan on 6.9.2006.

This is one line of the flow of title and transaction involved in respect of the subject property.

13. Mr. Rajasekaran, after executing power of attorney deed in favour of Mr. A.M. Nazeer on 3.8.2004, without cancelling it, directly sold the property to Mr. T.M. Varadarajan, the second respondent on 25.11.2004. Mr. T.M. Varadarajan, in turn, availed loan from erstwhile Dena Bank, now, got merged with first respondent bank on 29.12.2004, by deposit of title documents. This flow of title shows that when two registered documents like power of attorney deed dated 3.8.2004 executed by Mr. Robert Rajasekaran in favour of Mr. A.M. Nazeer and the sale deed executed by Mr. A.M. Nazeer on 4.10.2004 in favour of Mr. Akbar Ali and Ms. Jarina Begam were in existence, second respondent Mr. T.M Varadarajan purchased this property directly from Mr. Robert Rajasekaran.

14. The sale in favour of Mr. Akbar Ali and Ms. Jarina Begam by the power agent, Mr. A.M. Nazeer and the sale in favour of the appellants Mr. P. Mahesh Kumar and Asha Krthikeyan are reflected in the copy of the encumbrance certificate produced for the period 1.1.2000 to 1.7.2007. It is strange that sale executed by Mr. Robert Rajasekaran dated 25.11.2004

in favour of Mr. T.M. Varadarajan is not reflected in this encumbrance certificate. It is not known how this entry is missed out.

15. Appellants produced additional documents, i.e., i) copy of power of attorney deed executed by Mr. Robert Rajasekaran in favour of Mr. A.M. Nazeer on 3.8.2004 and ii) copy of encumbrance certificate for the period from 1.1.2004 to 31.12.2010. In the said encumbrance certificate, sale executed by Mr A.M. Nazeer as power agent of Mr. Robert Rajasekaran in favour of Mr. Akbar Ali and Mr. Jarina Begam, the sale executed by Mr. Robert Rajasekaran in favour of Mr. T.M. Varadarajan and the sale executed by Mr. Akbar Ali and Ms. Jarina Begam and in turn, the sale by Mr. Akbar Ali and Ms. Jarina Begam in favour of the appellants Mr. P. Mahesh Kumar and Asha Karthikeyan are reflected. There is no idea as to how the sale in favour of Mr. T.M. Varadharan is missed out in the copy of the encumbrance certificate for the period 1.1.2000 to 1.7.2007.

16. It is the submission of Learned Counsel for the appellants that had the sale in favour of Mr. T.M. Varadarajan been reflected in the encumbrance certificate obtained for the period 1.1.2000 to 1.7.2007, appellants would not have ventured to purchase this property. They bonafidely purchased

the property from the rightful owners. This submission of learned counsel for the appellants appears reasonable.

17. It is seen from both encumbrance certificates, the sale deed executed by Mr. A.M. Nazeer as power agent of Mr. Robert Rajasekaran on 4.10.2004 in favour of Mr. Akbar Ali and Ms. Jarina Begam is reflected. Thus, the question arises as to when the property was sold by the power agent of Mr. Robert Rajasekaran, how Mr. Robert Rajasekaran sold the property again to Mr. T.M. Varadarajan. It is quite obvious that Mr. T.M. Varadarajan, the second respondent failed to verify the encumbrance before his purchase. First respondent also failed to verify whether the second respondent has clear and marketable title for creating security interest by way of mortgage for availing loan.

18. It is true that the serious question of title involved between two parties cannot be gone into by DRT or by DRAT. It is pertinent to refer to the decision of Hon'ble Supreme Court of India in re, Central Bank of India Vs. Prabha Jain and others reported in (2025) 4 SCC 38, wherein Hon'ble Apex Court held, as follows:

> "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."

19. However, in this case, there is no such serious dispute is involved. It is quite evident from the documents of title that when there was a sale in favour of Mr. Akbar Ali and Ms. Jarina Begam on 4.10.2004, second respondent proceeded to purchase the property on 25.11.2004 and mortgaged it with the first respondent bank on 29.12.2004. As already stated, in the encumbrance certificates secured by the appellant for the period 1.1.2000 to 1.7.2007, the sale in favour of Mr. T.M. Varadarajan on 25.11.2004 is not reflected. Therefore, appellants purchased the property on 16.6.2006 from Mr. Akbar Ali and Ms. Jarina Begam. Of the two purchases involved in this litigation, i.e., the appellants and Mr. T.M. Varadarajan, from the records available, this Tribunal can only hold that the appellants have a better title than Mr. T.M. Varadarajan, the second respondent.

20. Since it is found that appellants have a better title on the subject property, this Tribunal is of the view that SARFAESI proceedings initiated against the

subject property on the basis of an illegal and void sale deed in favour of Mr. T.M. Varadarajan cannot be permitted to go. This Tribunal can incidentally decide on the title of the property in order to ascertain as to whether the measures have been taken in accordance with law under the SARFAESI act. Valid security interest has to be created for proceeding against the immovable property under the SARFAESI Act for taking possession and sale of the property. In the case before hand, there is no valid security interest created in favour of the first respondent bank. Therefore, SARFAESI measures initiated against the subject property is illegal and liable to be set aside and accordingly set aside.

21. For the reasons stated above, the order of the Learned Presiding Officer, DRT-II, Chennai dated 27.11.2009 passed in SA No.119/2008 is set aside. Consequently, SA No.119/2008 is allowed.

22. In the result, Appeal RA (SA) 165/2012 is allowed.

23. Parties are directed to bear their own costs.

24. Pending IAs, if any, stand closed.

[Dictated to PS (SN) transcribed by him, corrected, signed and pronounced by me in open court, this 19th May, 2026)

Sd/-

(JUSTICE G. CHANDRASEKHARAN)
CHAIRPERSON