IN THE DEBT RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 4th day of September, 2026

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

RA (SA) 48/2022
&
RA(SA) 49/2022

(arising out of SA 432/2021 and SA 420/2021 on the file of DRT, Coimbatore)

I. RA (SA) 48/2022

Between

Mr. K. Nagarajan,
S/o Sri Kolandha Gounder,
No.6/191-A1, Kudi Street,
Marurpatti Post,
Namakkal 637 019.

.....Appellant

And

1. The Authorised Officer,
   M/s Tamilnadu
   Mercantile Bank Ltd.
   Namakkal Branch,
   No.337/7, 114-1B,
   K.K.P. Complex, Salem
   Road,
   Namakkal 637 001.

2. Mr. K. Muthusamy,
   S/o Karuppannan,
   No.34-A,
   Vittamanaickenpatty,
   Veesanam Post,
   Namakkal Thaluk,
   Namakkal District.

.....Respondents

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Counsel for Appellant : M/s. V. Srimathi
Counsel for 1st Respondent : Mr. E. Kumar
Counsel for 2nd Respondent : Mr. R.R. Pradheep

II. RA(SA) 49/2022

Between

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No.6/191-A1, Kudi Street,
Marurpatti Post,
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.....Respondents

Counsel for Appellant : M/s V. Srimathi
Counsel for 1st Respondent : Mr. E. Kumar
Counsel for 2nd Respondent : Mr. R.R. Pradheep

COMMON ORDER

1. These appeals viz., RA(SA) 48/2022 and RA(SA) 49/2022 are filed under Section 18 of the SARFAESI Act to set aside the order dated 13.10.2022 passed by Learned Presiding Officer, DRT, Coimbatore in SA No.432/2022 and SA N.420/2021 respectively.

2. SA 432/2021 was filed to quash and set aside the order dated 17.5.2021 passed by the Learned CJM, Namakkal passed in Crl.MP. No.747/2021 and for consequential relief. SA 420/2021 was filed to quash and set aside the Sale Certificate dated 27.2.2020 registered as Document No.683/2021 in the Office of Sub-Registrar, Namakkal executed by the 1st respondent bank in favour of the second respondent and for consequential relief. Both SAs were dismissed by the Learned Presiding Officer on 13.10.2022. Detailed order has been passed in SA No.420/2021 and in view of detailed and comprehensive order passed in SA 420/2021, SA 432/2021 was also dismissed. As against these orders these appeals are filed, as indicated above.

3. Since the averments made in both these SARFAESI applications are almost identical, the case of the appellant, in brief, is as follows:.

3.1 The appellant is an agriculturist from an agricultural family. The subject matter of the SARFAESI proceedings is the property admeasuring 2.07 acres of agricultural land with small superstructure erected thereon in 1600 sq.ft situate in S.F.No.198/8A together with 1/3rd share of the Well situate in S.F.No.198/8B of Marurpatty Village, Namakkal Taluk, Namakkal District. This property along with other properties are ancestral joint family properties of Shri Kulandha Gounder, the father of the appellant and his brother Shri Ponnaiah Gounder. By a partition Deed dated 4.3.1968, all the properties were partitioned among Shri Kulandha Gounder and his brother Ponnaiah Gounder. The schedule property was allotted to the father of the appellant viz., Shri Kulandha Gounder vide Partition Document No.1478/2000. Joint Family properties which devolved to the share of Shri Kulandha Gounder, were partitioned among Shri Kulandha Gounder, his son the appellant and his daughter Smt. Malika. In the said partition deed, schedule mentioned property was described as Schedule A and allotted to the appellant. This property is an ancestral property in the hands of the appellant and his two minor daughters namely N. Madumitra and N. Shangamithra. Appellant and his daughters are entitled to 1/3rd share in the property.

3.2 While so, appellant availed financial assistance from the first respondent in the year 2014 to the tune of Rs.50.00 lakhs and it was enhanced to Rs.60.00

lakhs subsequently. He executed a Memorandum of Deposit of title deed on 13.8.2014 on his behalf and on behalf of his daughters. He also signed in blank documents as demanded by the respondent bank. Though the agriculture and transport business suffered a severe downfall during 2017-2018, still he was paying the dues to the bank. At some point of time, default had occurred and the account was classified as NPA on 31.1.2019 and 30.3.2019.

3.3 Appellant was trying for One Time Settlement and for restructure of the loan. Bank recalled the loan vides notices on 1.2.2019 and 1.4.2019 respectively and issued a demand notice dated 30.4.2019 under Section 13(2) of the SARFAESI Act. No breathing time was given to the appellant to pay the loan amount.

3.4 Bank was keen only on proceeding under the SARFAESI Act by issuing Section 13(4) notice on 18.7.2019 followed by Sale Notices dated 17.8.2019 and 16.11.2019. The property is an agricultural property, therefore, cannot be proceeded under the SARFAESI Act. Appellants challenged the Sale Notice dated 16.11.2019 through SA No.1/2020. The property worth about Rs.2.50 crores was grossly undervalued and sold for Rs.65,67,000/-. The

conduct of sale, confirmation thereof, issuance of sale certificate are all illegal in several aspects and are liable to be set aside.

3.5 First Respondent bank moved an application under Section 14 of the SARFAESI Act before Learned CJM, Namakkal and secured an order on 17.5.2021 in Crl.MP.No.747/2021 for the purpose of taking physical possession of the property. The order lacks proper application of mind and requires to be set aside. Without following the mandates of Section 14 of the SARFAESI Act, especially the details required to be furnished under Section 14, were not furnished to the Ld. CJM. Despite taking these grounds, mainly the grounds that the property is an agricultural property and cannot be proceeded with under the SARFAESI Act, that the appellant has only 1/3rd share in the secured asset, the property was sold for insufficient price, learned Presiding Officer has not considered these grounds and wrongly dismissed the application. Therefore, these appeals.

3.6 Reaffirming the grounds raised in the SARFAESI applicants, learned counsel for the appellant submitted that there are several documents produced before the Tribunal including the documents of the first respondent bank to show that land in question is an agricultural land. The legal opinion obtained prior to the sanction of the loan made it clear that the land involved is an

agricultural land. Communication addressed by the appellant, the partition deed and other documents produced support the case of the appellant that the land in question is an agricultural land. Kissan Credit Card passbook issued in favour of the appellant, revenue records and the report of the advocate commissioner would further corroborate the case of the appellant that the land in question is an agricultural land.

3.7 When specific defence is taken that property mortgaged is an agricultural land, therefore, proceedings cannot be initiated under Section 31(i) of SARFAESI Act, Ld. Presiding Officer, DRT, Coimbatore rejected this plea by stating that appellant has not produced any material evidence in support of his claim that the property mortgaged is an agricultural property. When documents produced are enough and self-evident to show that the property is an agricultural land, rejecting his claim on the ground that no material is produced is erroneous and without appreciation of the material on record. There is no finding with regard to the case of the appellant that appellant has only 1/3rd share of the secured asset and his daughters have 2/3rd share and therefore, proceedings against 2/3rd share of his daughters is not legal.

3.8 It is further submitted that for a loan amount of Rs.60.00 lakhs, appellant has deposited a sum of Rs.10.00 lakhs on 24.9.2019 subsequent to the first

sale notice issued by R1 Bank and after deposit of this amount, bank dropped the auction to be conducted on the basis of that sale notice. Thereafter, appellant paid Rs.65,67,000/- in two equal instalments of Rs.32,83,500/- each on 27.9.2021 and 26.10.2021 pursuant to the direction of Ld. Presiding Officer, DRT, Coimbatore while granting an order of injunction. Thereafter, on 16.11.2022, in terms of order of this Tribunal made in Waiver Application, a sum of Rs.16.00 lakhs was deposited towards pre-deposit. Thus, so far appellant have made a total payment to the tune of Rs.91,67,000/-. Advocate Commissioner in his report in paragraph 6 stated that there is maize, fodder crop cultivation in and around house property. All these factors have been overlooked by Ld. Presiding Officer, DRT, Coimbatore while passing orders in SAs and SAs were dismissed. Therefore, these appeals are filed.

4. Learned Counsel for 1st Respondent Bank submitted that the property is not an agricultural land. It is a house with garden. He drew the attention of this Tribunal to the partition deed dated 13.10.2000 executed among the Appellant and his family members, wherein the Appellant was allotted 'A' Schedule property.

4.1 From the description of the property, it can be gathered that Punja land measuring 2.07 acres in Survey No. 198/8A, Marurpatty village, Namakkal district, along with 1/3rd right in the common well in Survey No. 198/8B, was allotted.

4.2 He also produced the house tax receipt to show that the house in this property is assessed in the name of Appellant. The document filed to show the business of the appellant at the time of availing the loan, shows that the Appellant was a transport operator. The description given in this document shows that there is land and building to an extent of 3172.75 sq.ft. The valuation report 26.6.2014, taken at the time of availing loan, shows existence of AC sheet roof residential building and AC sheet roof shed with coconut trees. The valuation report dated 09.08.2019, prior to sale shows that the property is dry land, well irrigated and there was no crop at the time of valuation.

4.3 When possession was taken, an inventory was prepared and it shows that they are only household articles. He also produced photographs showing the present status of the secured asset to show that only buildings and coconut trees are available. It is his submission that merely because there are coconut

trees available in the secured asset, the property cannot be classified as agricultural land.

4.4 The loan in this case was availed in the year 2014. On default to pay the loan due, the account was classified as NPA on 31.01.2019. Demand Notice under Section 13(2) of SARFAESI Act, 2002 was issued on 30.04.2019 followed by Possession Notice dated 18.07.2019. Sale Notice was dated 16.11.2019. The property was sold on 09.12.2019 and after appropriating the sale proceeds towards loan due, the account was closed on 24.12.2019. At no point of time, the Appellant had taken the plea that the property is an agricultural property until the property was sold. Appellant, on an instigation of a third party and others with a prayer for attaching the property, filed Suit in O.S. No.30/2019 in Namakkal Sub-Court. The order of attachment was passed and Writ Petition was filed in W.P. No.1410/2021 by 1st Respondent Bank. The said Writ Petition was allowed on 25.01.2021 and sale certificate was ordered to be registered.

4.5 The land is not an agricultural land and records had been created by Appellant after sale, only with a view to defeat the sale. Thus, he pressed into service the judgement of Hon'ble Supreme Court in **ITC Limited Vs. Blue Costs Hotels Ltd. and Ors.**, reported in **AIR 2018 SC 3063**, for the proposition that it

is required to be shown that the land is used for agricultural purpose and not mere possibility of use of land, by some possible future owner or possessor, for an agricultural purpose. If there is neither anything in its condition nor anything in evidence to indicate the intention of its owners or possessors, so as to connect it with agricultural purpose, the land could not be classified as an agricultural land. It is submitted that the property mortgaged is not an agricultural land but land with building and coconut trees, and therefore, it is not exempted under Section 31(i) of SARFAESI Act, 2002.

5. Learned Counsel for Respondent No.2 supported the arguments of Learned Counsel for 1st Respondent and added that it is established that there is a house and the garden. There is no evidence to show that water is drawn from a common well for the purpose of agriculture. Appellant had not raised any objection to Section 13(2) Demand Notice or made representation after receipt of the Demand Notice. The claim that the property is an agricultural property was not taken till the sale certificate was registered. Kissan Passbook was created after the sale in favour of the auction purchaser. There was no challenge to the possession notice or sale notice, but Securitization Application was filed only after the sale, challenging the sale certificate. This is not permissible. Thus, he prayed to confirm the order of Learned Presiding Officer and dismiss the Appeal.

6. I have considered the rival submissions and perused the documents.

7. Appellant filed Securitization Applications challenging the measures initiated under the SARFAESI Act, especially, sale measures and proceedings under Section 14 of the SARFAESI Act, primarily on the following grounds.

   a) Land concerned in the SARFAESI proceedings is an agricultural land.
   b) Land is a Joint family ancestral property and appellant is entitled for 1/3rd share and the remaining 2/3 share belongs to his minor daughters.
   c) The property was undervalued and sold for insufficient price.

8. There is no dispute with regard to borrowal from the first respondent bank, default in repayment, issuance of demand notice, possession notice, sale notice and sale of the property. Appellant relied on the legal opinion given by the panel advocate of the first respondent bank dated 2.8.2014 to prove that the land has been referred as an agricultural land in the legal opinion.

9. True it is that in the legal opinion dated 2.8.2024 given by advocate Mr. A.R. Balakrishnan to the Manager of the first respondent bank, it is mentioned that land measuring 2.07 acres situated in S.No.198/8A and 1/3rd right in the well in S.No.198/8B of Marurpatty village, Sendamangalam Sup-RD, Namakkal

Taluk, Namakkal District is referred as an agricultural land. This legal opinion obviously was obtained prior to the sanction of the loan.

10. Learned Counsel for the Appellant also drew the attention of this Tribunal to the letters addressed by the appellant to the Manager of the first respondent bank dated 13.8.2014, 31.3.2015 and 30.12.2017 to show that he referred the land which was offered as security and on which equitable mortgage was created, as an agricultural land. Legal opinion dated 2.8.2014 is also relied to show that land in question belongs to the appellant and his minor daughters viz., N. Madumitra and N. Shangamithra.

11. On the other hand, first respondent bank brought to my notice the valuation report dated 26.6.2014 given by the bank's approved valuer to show that the land was shown as jointly owned land and the land has RCC roof and AC sheet roof, residential building with AC sheet roof shed. It was classified as mixed area, consisting of residence and agriculture.

11.1 Even in the partition deed dated 13.10.2000, land is mentioned a *punja* land, meaning that there is no proper water source from a river or a lake. In the application dated 6.10.2017 seeking Overdraft Facility of Rs.35.00 lakhs, appellant claimed that he is a transport operator. In that application, it is mentioned that there is land to an extent of 2.11 acre at S.No.198/8A,

198/8B and a building to an extent of 3172.75 sq.ft at Marurpatty village, Namakkal standing in his name. Valuation report dated 26.6.2014 was given on the basis of the inspection conducted on 24.6.2014 in the presence of the appellant. Photographs filed show that there is a residential building, building with asbestos and coconut trees. There is no structured agricultural operations seen from the photographs produced. Another valuation report dated 9.8.2019 also reflects that there is land and building with RCC roof and A.C. Sheet roof, residential building and sericulture shed. It is referred that the land is well irrigated dry land. There is no crop at the time of inspection. No evidence produced to show that the well has sufficient water for irrigation and water is drawn from the well either through channels or pipes.

11.2 Advocate Commissioner's report shows that there is cultivation of *Cholam, Makka Cholam*, i.e., maize and corn and fodder crops in the land. However, photographs taken on 9.1.2025 show that there is no structured agricultural operations being carried out in the land in question.

12. Countering this submission, learned counsel for the appellant brought to my notice copies of *adangal* extracts to show that *adangal* extracts refer about the existence of coconut trees and other crops. Apart from that, appellant relied on the Kissan Passbook issued in his favour.

13. We have two sets of documents, one set of documents produced by the appellant showing that the land is an agricultural land and the other set of documents produced by the first respondent bank showing that land is a mixed land consisting of residence and agriculture. Photographs produced in the form of typed set by the first respondent bank show that there is no structured agricultural operations being carried out in the land. However, the legal opinion given by the first respondent bank mentions that the land is an agricultural land.

14. The loan application submitted by the appellant shows that there is a building to the extent of 3172.75 sq.ft. in existence. Photographs show that there are coconut trees available in the land, but, no structured agricultural operations and crops are seen. It is a settled proposition of law that merely on the basis of revenue records, it cannot be conclusively held that the land in question is an agricultural land and that agricultural operations are being carried out. Advocate Commissioner's report refers to cultivation of seasonal crops like maize and corn i.e., *cholam, makka cholam* and fodder crops. Even assuming that there is a possibility that land was used for both agricultural purpose and for raising coconut trees and aforesaid seasonal crops, what is important here is that how the borrower/mortgagor wanted to treat this land at the time of

creation of mortgage in favour of the first respondent bank. It is pertinent to refer to the decision of the Hon'ble Supreme Court of India in re, **ITC Limited Vs. Blue Coast Hotels Ltd. reported in AIR 2018 SC 3063**, wherein it is held, as follows:

> "38. The purpose of enacting Section 31(i) and the meaning of the term "agricultural land" assume significance. This provision, like many others is intended to protect agricultural land held for agricultural purposes by agriculturists from the extraordinary provisions of this Act, which provides for enforcement of security interest without intervention of the Court. The plain intention of the provision is to exempt agricultural land from the provisions of the Act. In other words, the creditor cannot enforce any security interest created in his favour without intervention of the Court or Tribunal, if such security interest is in respect of agricultural land. The exemption thus protects agriculturists from losing their source of livelihood and income i.e. the agricultural land, under the drastic provision of the Act. It is also intended to deter the creation of security interest over agricultural land as defined in Section 2 (zf) 36. Thus, security interest cannot be created in respect of property specified in Section 31."

14.1 **It is further held that since no security interest can be created in respect of an agricultural land, yet, it was so created, it goes to show that the parties did not treat the land as agricultural land and later offered the land as security.**

14.2 It is further held in re, **Indian Bank Vs. K. Pappireddiyar reported in AIR 2018 SCC 3540** that merely because the revenue records show that

secured property is an agricultural land that is not sufficient to attract Section 31(i) of the SARFAESI Act and the property in question has to be actually in use for agricultural purpose at the time when security interest was created. These propositions are also referred in the decision rendered by the Hon'ble Supreme Court of India in re, **K. Sreedhar Vs. M/s Raus Constructions Pvt. Ltd reported in (2023) 11 SCC 169.**

15. In the case before hand, materials produced suggest that the land in question is for both residential and agriculture use and mainly consists of coconut trees and seasonal crops. There is no regular, systematic and structured agricultural operations seen from the photographs produced. The land on which appellant created mortgage is a mixed land of residential and agriculture use, thereby showing that appellant has not treated/used the land entirely for agriculture purpose. That is the reason why he created mortgage in respect of the land for availing the loan facility.

16. From the facts narrated above, this Tribunal is of the view that appellant, after creating security interest over the land in favour of the first respondent bank to secure the loan facility, committing default in repaying the loan amount, cannot now claim exemption under Section 31(i) of the SARFAESI Act

stating that SARFAESI measures cannot be initiated against agricultural land offered as security.

17. It is true that appellant has only 1/3rd share and his minor daughters have 2/3rd share. He executed loan documents not only on his behalf, but, also on behalf of his minor daughters as their guardian and *kartha* of Joint Family. Therefore, he cannot now claim that bank cannot proceed against the secured asset. It is for the minor daughters to challenge the mortgage, if they claim that the loan was availed not for their benefits or for the benefit of the family and it was obtained for illegal or immoral purpose of the appellant.

18. As far as the claim of undervaluation of the property is concerned, appellant has not produced any material to show that what is the actual value of the property when the property was sold, by producing copy of the sale deed of the land, land and building sold during the relevant point of time. That be the case, appellant cannot challenge the valuation adopted by the first respondent bank.

19. It is pertinent to note that appellant failed to raise the grounds now raised, either by sending objections to the Demand Notice and in challenging the Possession Notice, Sale Notice or the sale. He filed the Securitization Applications after the sale certificate was issued. Sale Notice and consequent

sale are distinct measures. Every measure has to be challenged within a specified time i.e., 45 days from the date of the measure taken, as required under Section 17(1) of the SARFAESI Act. Section 17(1) reads as follows:

> "17(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 alongwith 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."

20. Appellant missed the opportunity to challenge the defects in the issuance of sale notice, valuation of secured asset, timeline fixed for sale, payment of EMD amount, 25% of sale consideration and balance 75% of sale consideration amount, etc. Thus, he miserably failed to challenge either the sale notice or the sale but only challenged the Sale Certificate dated 27.2.2020 registered as Document No.683/2021 in the Office of Sub-Registrar, Namakkal executed by the 1st respondent bank in favour of the second respondent, which is not a distinct measure to challenge under the provisions of the SARFAESI Act and the Rules made thereof. Issuance of sale certificate is only a consequential action after the sale. When cause is not challenged, the effect cannot be challenged in isolation. Further, no illegalities or irregularities in the order dated 17.5.2021 passed under Section 14 of the SARFAESI Act by

the Learned CJM, Namakkal in Crl.MP. No.747/2021 were brought to light by the appellant.

21. In the circumstances, this Tribunal finds that the Securitization Applications viz., SA 432/2021 and SA 420/2021 filed by the appellant were rightly dismissed by the learned Presiding Officer and it requires no interference by this Tribunal.

22. **In the result**, Order passed by Learned Presiding Officer, DRT, Coimbatore in SA No.432/2022 and SA N.420/2021 dated 13.10.2022 are confirmed and these Appeals, viz., RA (SA) 48/2022 and RA(SA) 49/2022 are dismissed.

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 4th September, 2026)

Sd/-
(JUSTICE G. CHANDRASEKHARAN)
CHAIRPERSON