Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI

DATED THIS 28th DAY OF AUGUST, 2026

PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

SA No. 463/2017

A.Kuthupullasa,
S/o. Abdul Rahman,
50-52, mohideen Andavar 2nd Lane,
South, perumal Maistry Street,
Madurai – 625001. .... Applicant

Vs

1. Karur Vysya Bank ltd,
   Madurai South Branch,
   Rep. by its Manager,
   South Masi Street,
   Madurai.

2. The Authorized Officer / Chief Manager,
   Madurai South Branch,
   South Masi Street,
   Madurai. .... 1st and 2nd Defendants Bank

3. The District Collector,
   Madurai District. .... 3rd Defendant

4. S.Sulaiman,
   Door. No 909,
   Marudhupandiar,
   Gomathipuram,
   Madurai – 625 020. .... Borrower / 4th Defendant

Appearance of Advocates:
Mr. M.Arun Murugan ---- Counsel for the Applicant
Mr.P.Madhan Alexander ---- Counsel for the Defendants Bank
Defendant No.4 sets Ex-parte

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This SARFAESI Application was heard in the presence of Counsels for the Applicants and the Defendant FI and fixed for passing final order before me and upon hearing the arguments of the Counsels and having stood over for consideration till this day, this Tribunal delivered the following:

O R D E R

1. This Application has been filed under Section 17 of the SARFAESI Act, 2002 by the Applicant, praying that this Hon'ble Tribunal may be pleased to set aside the e-Auction Sale Notice dated 02.11.2015, fixing the auction sale on 09.12.2015, issued by the Respondent Bank.

a) To declare the mortgage created by the 4th Respondent with the 1st and 2nd Respondent Banks as null and void, as it is against the decree of the Civil Court and the Hon'ble High Court.

2. The brief case of the Application filed by the Applicant is as follows:-

(a) It is submitted that, the schedule of properties originally belonged to Ismail Gani Rowther, who is the paternal grandfather of the Applicant. He had three sons and three daughters. The names of the sons are: (1) Abdul Gafoor, (2) Sikkander, and (3) Abdul Rahman. The names of the daughters are: (1) Sorat Bibi, (2) Mahaboob Bibi, and (3) Subaida Bibi. The Applicant is the son of Abdul Rahman. The 3rd Respondent is the son of Sikkander. For easy reference, a genealogical table is attached along with this S.A. Application, which may be read as part and parcel of this Application.

(b) It is further submitted that, after the death of Ismail Gani Rowther, one of his daughters, namely Subaida Bibi, filed a suit for partition of the schedule of properties in O.S. No. 364 of 1977 on the file of

the Principal Subordinate Judge, Madurai, claiming a 13/90 share in the family properties. After full trial, the suit in respect of the schedule of properties was decreed in her favour, and a final decree was passed on 21.04.1988. Sikkander, who is the father of the 4th Respondent, was a party to the above suit. Aggrieved by the decree passed in O.S. No. 364 of 1977, some of the defendants in the said suit preferred an appeal in A.S. No. 558 of 1989 before the Hon'ble Madurai Bench of the Madras High Court, and the appeal was dismissed.

(c) It is further submitted that, he, along with his family members, is residing in a portion of the schedule of properties. The schedule of properties has not been divided by metes and bounds. The Applicant's father was the 5th Respondent in the partition suit. After the passing of the final decree, the Applicant's father died, leaving behind the Applicant and three daughters as his legal heirs. As per the findings of the final decree, the schedule of properties is indivisible in nature, and the Hon'ble Court directed the Applicant to take steps as per the provisions of the Partition Act, and the properties should be kept undivided as common properties. Therefore, no one has any right to alienate the schedule of properties.

(d) It is further submitted that, in the meanwhile, to the utter shock and surprise of the Applicant, he came to know about the auction notice dated 26.01.2009 issued by the learned Recovery Officer, D.R.T., Madurai, which was published in the Dinathanthi Tamil Daily newspaper on 27.02.2009. Immediately, the Applicant verified the case before the D.R.T. Thereafter, the Applicant came to know that, during the pendency of A.S. No. 558 of 1989 before the Hon'ble High Court, suppressing the pendency of the said appeal, the 3rd Respondent herein seems to have fraudulently created a

partition deed dated 17.10.1983 and obtained a loan from the 1st and 2nd Respondents by offering the property as security for the loan on 18.05.2000. During the pendency of A.S. No. 558 of 1989, Sikkander and the 3rd Respondent colluded with each other and fraudulently created another partition deed on 03.08.1995.

(e) It is further submitted that, suppressing all the above-said facts, the 1st Respondent, without scrutinizing and investigating the details of the alleged collateral security, sanctioned the loan in the year 2000, despite the decrees and judgments of the Civil Court and the Hon'ble High Court. The Respondents 1 and 2, colluding with each other, filed O.A. No. 120 of 2002 before the D.R.T., Madurai, and obtained a final order behind the back of the Applicant, and a Debt Recovery Certificate was also issued in R.P. No. 296 of 2007. After gaining knowledge of the recovery proceedings, the Applicant filed a claim petition and a stay petition before the Recovery Officer in I.A. No. 224 of 2009 and I.A. No. 223 of 2009 under the RDBT Act, and the same are pending for adjudication. The 2nd Respondent admitted all the above-said facts and filed a counter-affidavit through the 1st Respondent.

(f) It is further submitted that, in the meanwhile, the 4th Respondent started disturbing the Applicant's peaceful possession and enjoyment of the schedule of properties. The Applicant filed a suit for permanent injunction against the 4th Respondent, seeking to restrain him from interfering with the Applicant's peaceful possession and enjoyment of the schedule of properties, in O.S. No. 996 of 2009 on the file of the Hon'ble Additional District Munsif, Madurai Town, and an order of injunction was granted in the said suit. In spite of the injunction order, the 4th Respondent and his family members attempted to trespass into the schedule of properties. The Applicant lodged a police complaint against them,

pursuant to which an FIR was registered and a charge sheet was filed in C.C. No. 76 of 2010, which is pending before the Judicial Magistrate No. IV, Madurai. Another FIR was registered against them for allegedly attempting to grab the schedule of properties by the District Crime Branch, Madurai, and a charge sheet was filed in C.C. No. 346 of 2008, which is pending on the file of the Judicial Magistrate No. 6, Madurai. While the facts stood thus, all of a sudden, to the utter shock and surprise of the Applicant, he came to know that the 1st Respondent had issued a demand notice under the SARFAESI Act, stating that the schedule of properties was proposed to be taken into possession through the 3rd Respondent under Section 14 of the SARFAESI Act. The Applicant was shocked by the said action. Immediately, the Applicant enquired with the office of the 3rd Respondent about the nature of the proceedings. On enquiry, the Applicant came to know that the Respondents 1 and 4, suppressing all the above-said facts, had filed an application before the 3rd Respondent under Section 14 of the SARFAESI Act, seeking to take physical possession of the schedule of properties, in Na.Ka. No. C3/5662/14. It was then that the Applicant came to know that a fraud had been committed by the Respondents 1, 2 and 4. Immediately, the Applicant submitted a petition before the 3rd Respondent, requesting him to drop all proceedings in Na.Ka. No. C3/5662/14, dated 24.10.2015. The Applicant submits that the 4th Respondent or his father had no right to create any mortgage, ignoring the Applicant's right, share and possession over the schedule of properties. The alleged equitable mortgage is not valid. The 4th Respondent is not the absolute owner of the schedule of properties and is only a co-sharer therein. The Applicant and his family members have been residing in the schedule of properties for several decades. The Applicant is neither a borrower nor a party to the alleged proceedings before the Debt Recovery Tribunal.

(g) It is further submitted that, in the meanwhile, to his shock and surprise, at the instigation of the 2nd Respondent, its Recovery Agents came to the schedule of properties and confronted the Applicant, stating that he would have to face dire consequences. They also went to the extent of threatening the Applicant to forcibly evict him from the schedule of properties. The action of the officials of the 2nd Respondent is high-handed and illegal.

(h) It is further submitted that, the 2nd Respondent is not a legally secured creditor, since there is no valid charge created over the schedule of properties. Since the schedule of properties has not been divided by metes and bounds, the 4th Respondent, in collusion and connivance, fraudulently created a partition deed with a mala fide intention and with the object of grabbing the schedule of properties. The 4th Respondent created a fraudulent document and brought into existence the said document, styling it as a mortgage. Further, it seems that the 1st and 2nd Respondents issued a sale notice on the strength of the above-said mortgage. The order passed by the D.R.T. in O.A. No. 120 of 2002 and the recovery proceedings are null and void, unenforceable and not binding on the Applicant, as a decree had already been passed in favour of the Applicant even before the alleged mortgage was created.

(i) It is further submitted that, from the above-said facts and circumstances, it is crystal clear that the encumbrance created by the 4th Respondent by creating such mortgage is nothing but null and void ab initio and unenforceable, and is not binding upon the right, title, ownership and possession of the Applicant in respect of the schedule of properties by virtue of the alleged mortgage. The alleged loan is fraudulent, and the alleged mortgage is hit by the doctrine of lis pendens.

(j) It is further submitted that, the Respondents 1, 2 and 4 are now attempting to take physical possession of the schedule of properties with the help of the 3rd Respondent and attempting to sell the schedule of properties under the guise of SARFAESI Act proceedings. The Respondents 1 and 2 have taken hectic efforts to take physical possession of the schedule of properties with the help of the 3rd Respondent and the police. After verifying the decree, the 3rd Respondent left the place and asked all of them to approach either the D.R.T. or the Civil Court. If the attempts of the Respondents fructify, the Applicant's valuable rights over the schedule of properties will be lost. The Applicant and his family members will be stranded in the street and will be highly prejudiced in case the Respondents are permitted to do so. The action of the Respondents 1 to 3 is high-handed and illegal. The Respondents 1 to 3 are not entitled to take possession of and sell the schedule of properties in any manner.

(k) It is further submitted that, he has therefore come forward with the present application seeking a declaration that the impugned mortgage created by the 4th Respondent in favour of the 2nd Respondent in respect of the schedule of properties is null and void ab initio, unenforceable and not binding upon the Applicant's right and possession over the schedule of properties, and also seeking a declaration that the Applicant is entitled to be in lawful possession and enjoyment of the schedule of properties.

(l) It is further submitted that, the right to property, although no longer a fundamental right, is still a constitutional right. It is also a human right. In the absence of any provision, either expressly or by necessary implication, depriving a person thereof, the Court shall not construe a provision leaning in favour of such deprivation.

(m) It is further submitted that, when all their efforts failed, the Respondents 1 and 2 have now issued the e-Auction Sale Notice dated 02.11.2015, fixing the auction sale on 09.12.2015, which is illegal, arbitrary and against the judgment of the Civil Court and the Hon'ble High Court.

Main Grounds:-

- Because the issuance of the demand notice, possession notice and auction sale notice is illegal and arbitrary and is against the judgment of the Civil Court and the Hon'ble High Court.

- The Respondent Bank did not obey the orders of the Civil Court and the Hon'ble High Court. The action of the Respondent Bank has caused mental agony to the Applicant.

- The mortgage of the property is an afterthought, as there was already a decree passed by the Civil Court in the partition suit prior to the creation of the mortgage. The Hon'ble High Court also passed a judgment in favour of the Applicant in the Appeal Suit. The 4th Respondent was well aware of the said facts.

- The Civil Court has already passed an order of injunction in the bare injunction suit against the 4th Respondent, restraining him from alienating the property and interfering with the peaceful possession and enjoyment thereof.

- Since he did not obey the injunction order, an FIR was registered against him, and a charge sheet was filed, which is pending for prosecution before the Judicial Magistrate Court, Madurai. Another FIR was filed against the 4th Respondent and his men by the DCB, Madurai, and the same was also charge-sheeted, and the

prosecution is pending before the Judicial Magistrate Court, Madurai.

DESCRIPTION OF PROPERTIES

Item No.1: Madurai South District, Madurai Sub Registration District, Madurai Town, Survey Ward No.3 T.S.No.2092, 2093.2, South Perumal Maistry Street, Mohaideen Andavar 2nd Lane Door No. 50, 51 and 52, a house building siuate within the following four boundaries.

North by: Samsudeen Jainulabudeen Abbas Ali's house properties;
East by: T.S.NO.2091/2 vacant site and lavatory,
South by: Janab house and Muslim chavadi common wall
West by: South north street.

Within house building including north lane, south to north in the eastern side 33.50 feet; on the western side 34r feet, east to west on the northern side 56 feet; on the southern side 56 feet terraced building bathroom, lavatory, corporation water tap; electrical connection with all its appurtenance thereto.

Item No.2: Madurai South District Sub Regn, District, Madurai Town, Survey Ward No.3, T.S.No.2093/2, South Perumal Maistry Street, Mohaideen Andavar 2nd LaneT.S.No.2093/2 vacant site and a lavatory situate within the following four boundaries:

North by: Abbas Ali Vagaira Survey No.2086;
East by: Abbu Rahuman, Abbas Ali Vagaira Survey No.2098.
South by: Navabjahan vagaira House Survey No.2096;
West by: Town Survey No.2094 house.

On the northern side 'I' Thakku' to west on the northern side 13 feet on the southern side 1.50 feet, south to north on the western side 33.50 feet: on the eastern side 34.50 feet and the '2nd, thakku' east to west on the northern side 10.50 feet; on the southern side 12.75 feet; south to north on the western side 10 feet on the eastern side 9.10 feet and '3rd, thakku' east to west 7 feet and south to north 4 feet.

The Applicant has submitted the following List of documents in support of his claim in the SA, which are as follows:

Sl. No.	**Date**	**Particulars of Documents**
1	—	Family Card of the Plaintiff
2	—	Aadhaar Card of the Plaintiff
3	—	Voter ID of the Plaintiff
4	—	Domestic Gas Consumer Card
5	—	E.B. Receipt
6	21.04.1988	Fair and Decreetal Order in I.A. No. 149 of 1979 in O.S. No. 367 of 1977
7	15.03.2000 and 31.03.2000	Property Tax Assessment Notices issued by Madurai Corporation in the name of Ismail Gani Rowther
8	May 2009	Petition Copy in I.A. No. 224 of 2009 in R.P. No. 1976 of 2007 filed before the D.R.T., Madurai
9	27.01.2009	Counter-Affidavit filed by the Bank
10	11.09.2009	Copy of the Paper Publication
11	22.12.2009	Order in W.P. No. 11479 of 2009 passed by the Hon'ble Madurai Bench of the Madras High Court
12	10.02.2010	FIR Copy in Crime No. 1521 of 2009 filed before the South Gate Police Station, Madurai, against the 1st Defendant and others
13	08.03.2010	Order Copy in A.S. No. 558 of 1989 passed by the Hon'ble High Court of Judicature at Madras
14	—	Judgment and Decree in O.S. No. 996 of 2009 on the file of the Additional District Munsif, Madurai Town
15	24.08.2015	Objection Petition sent to the District Collector, Madurai, with A.D. Card
16	24.09.2015	Complaint Receipt issued by the Collectorate Office
17	02.11.2015	E-Auction Sale Notice

Typed Set filed by the Applicant on 02.08.2018

SI. No.	Date	Description of Documents
1	Aug. 1977	Plaint in O.S. No. 364 of 1977 on the file of the Sub Court, Madurai
2	Nov. 1977	Written Statement filed by Late Sikkander (father of the 3rd Respondent herein), 2nd Defendant therein, in O.S. No. 364 of 1977 on the file of the Sub Court, Madurai
3	Nov. 1977	Reply Statement filed by the Plaintiff in O.S. No. 364 of 1977 on the file of the Sub Court, Madurai
4	29.04.1978	Preliminary Decree in O.S. No. 364 of 1977 on the file of the Sub Court, Madurai
5	29.12.1978	Final Decree Application in I.A. No. 149 of 1978 in O.S. No. 364 of 1977 on the file of the Principal Sub Court, Madurai
6	19.06.1979	Counter filed by Late Sikkander in I.A. No. 149 of 1978 in O.S. No. 364 of 1977 on the file of the Principal Sub Court, Madurai
7	15.12.1980	Commissioner's Report in the Final Decree Application in I.A. No. 149 of 1978 in O.S. No. 364 of 1977 on the file of the Principal Sub Court, Madurai
8	17.10.1983	Alleged Partition Deed projected by the 3rd Respondent herein
9	12.03.1984	Judgment in A.S. No. 790 of 1979 before the Hon'ble High Court (Appeal against Preliminary Decree) and its clean copy
10	21.04.1988	Judgment in I.A. No. 149 of 1978 in O.S. No. 364 of 1977 on the file of the Principal Sub Court, Madurai
11	June 1989	Memorandum of Grounds in A.S. No. 558 of 1989 before the Hon'ble High Court (Appeal against Final Decree)
12	03.08.1995	Alleged Partition Deed between Late Sikkander and the 3rd Respondent herein
13	April 2003	Affidavit and Petitions in C.M.P. Nos. 9356 to 9358 of 2003 in A.S. No. 558 of 1989 before the Hon'ble Court
14	Feb. 2009	Affidavit and Petition in the Claim Petition in I.A. Nos. 223 and 224 of 2009 in R.P. No. 296 of 2007 in O.A. No. 120 of 2002 before the D.R.T., Madurai
15	23.02.2009	Counter filed by the Bank in I.A. Nos. 223 and 224 of 2009 in R.P. No. 296 of 2007 in O.A. No. 120 of 2002 before the D.R.T., Madurai
16	23.02.2009	FIR No. 1521/2009, B5 South Gate Police Station, against the 3rd Respondent (petition complainant)
17	10.02.2010	Judgment in A.S. No. 558 of 1989 before the Hon'ble High Court (Appeal against Final Decree)

SI. No.	Date	Description of Documents
18	08.03.2010	Judgment and Decree in O.S. No. 996 of 2009 filed by the Applicant against the 3rd Respondent before the Additional District Munsif, Madurai Town
19	31.01.2012	Demand Notice issued by the 2nd Respondent Bank under Section 13(2) of the SARFAESI Act
20	29.06.2012	Possession Notice issued by the 2nd Respondent under Section 13(4) of the SARFAESI Act
21	17.10.2012	FIR No. 865/2012, B5 South Gate Police Station, against the 3rd Respondent (petition complainant)
22	24.08.2015	Petition/Representation submitted by the Applicant before the 1st Respondent/District Magistrate for impleading in the Section 14 proceedings, along with acknowledgement and translated copy
23	03.03.2018	Suit in O.S. No. 652 of 2015 on the file of the Additional District Munsif, Madurai Town (Applicant)
24	02.11.2015	Copy of E-Auction Sale Notice

Additional Typed Set filed by the Applicant on 02.08.2018

SI. No.	Date	Description of Documents
1	05.06.2010	Complaint sent to Madurai Municipal Corporation
2	----	Ration Crad of Sulaiman
3	----	Ration card of Applicant

Additional Typed Set filed by the Applicant on 22.12.2025

SI. No.	Date	Description of Documents
1	29.04.1978	Judgment in O.S. No. 364/1977 on the file of Sub-court Madurai
2	10.02.2010	Order in A.S.No.558/1989 on the file of Honble Madras High Court Madurai Bench
3	----	Postal Cover showing no such address of borrowers showing address

Additional Typed Set filed by the Applicant on 22.07.2026

SI. No.	Date	Description of Documents
1	18.05.2000	Loan Sanction Letter
2	----	Statement of Accounts

SI. No.	Date	Description of Documents
3	----	Encumbrance Certificate

3. On the other hand, the counsel for the Defendants Bank appeared before this Hon'ble Tribunal and filed Written Argument, and a typed set of papers, wherein it was submitted that, the property mentioned in the appeal was mortgaged by the 4th Respondent for the credit facility availed by M/s. Tamilnadu Steel Corporation. The title deeds were deposited on 17.05.2000. As the mortgage was not redeemed, our Bank filed O.A. No. 120 of 2002, and the Hon'ble DRT issued a Recovery Certificate dated 26.10.2005 in D.R.C. No. 132 of 2005. The Hon'ble Recovery Officer also issued a notice of proclamation of sale dated 24.11.2006 for the sale scheduled on 18.12.2006; however, there were no bidders. Thereafter, the Hon'ble Recovery Officer initiated recovery proceedings in R.P. No. 296 of 2007. During the pendency of the proceedings, the matter was referred to the Lok Adalat, and an award was passed on 12.07.2008 directing payment of a sum of Rs.18,25,000/- on or before 30.09.2008; however, the said amount was not paid till date. Be that as it may, the Hon'ble Recovery Officer issued a second auction notice dated 21.01.2009 for the sale of the property mentioned in the appeal on 28.01.2009. Under the said circumstances, the sisters of Mr. Sulaiman (i.e., the 4th Respondent) filed I.A. No. 26 of 2009 seeking consideration of their objections, and our Bank filed a detailed counter, whereafter the said application was dismissed. Likewise, one Mr. Mohamed Iliyas, son of Mrs. Mehaboob Beevi (daughter of Mr. Ismail Kani Rowther), filed I.A. No. 246 of 2007 in R.P. No. 296 of 2007 seeking to stay the auction scheduled on 27.02.2009, and the said application was dismissed. Similarly, the Petitioner herein filed I.A. No. 224 of 2009 in R.P. No. 296 of 2007 seeking to adjudicate his right over the property mentioned in the appeal and to modify the recovery proceedings by deleting the property mentioned in the petition, and the said application

was also dismissed. In all the aforesaid interlocutory applications, the facts and legal proceedings relating to the partition suit, i.e., O.S. No. 364 of 1977, were twisted. Hence, the correct facts are culled out hereunder.

(i) The buildings bearing Door Nos. 50, 51 and 52 (the property mentioned in the appeal) originally belonged to Mr. Ismail Kani Rowther.

(ii) Mr. Ismail Kani Rowther was blessed with the following six children:

a. Mr. Abdul Gafoor
b. Mr. Abdul Rahman
c. Mr. Sikkandar
d. Mrs. Zurat Beevi
e. Mrs. Mehaboob Beevi
f. Mrs. Subaida Beevi

(iii) After the demise of Mr. Ismail Kani Rowther, his daughter, Mrs. Subaida Beevi, filed a suit for partition in O.S. No. 364 of 1977 on the file of the Principal Sub Court, Madurai, in respect of her 13/19th share. The suit was filed against the following persons:

a. Mrs. Noorjahab Beevi (wife of Late Abdul Gafoor)
b. Mr. Abdul Rahman (father of the Appellant)
c. Mr. Sikkandar
d. Mrs. Zurat Beevi
e. Mrs. Mehaboob Beevi
f. Mrs. Rabiya Beevi (wife of Mr. Sikkandar)

(iv) The subject property was identified as Item No. II in the 'A' Schedule of the plaint.

(v) A preliminary decree was passed on 29.04.1978.

(vi) Aggrieved by the preliminary decree, Mr. Sikkandar filed A.S. No. 790 of 1979 before the High Court of Madras.

(vii) During the pendency of A.S. No. 790 of 1979, the Plaintiff, Mrs. Subaida Beevi, filed a final decree application in I.A. No. 149 of 1979, and an Advocate Commissioner was appointed. In his report, the Commissioner opined that the subject property was not divisible and, hence, proceedings had to be taken for the sale of the property. The other properties were to be divided according to the respective shares of the parties, and the Commissioner filed his report accordingly.

(viii) During the pendency of the following legal proceedings:

a. A.S. No. 790 of 1979 filed by Mr. Sikkandar before the High Court, Chennai;
b. Final Decree Petition in I.A. No. 149 of 1979 in O.S. No. 364 of 1977,

the following parties to the suit, namely, (a) Mrs. Subaida Beevi, (b) Mrs. Mehaboob Beevi, (c) Mr. Sikkandar, (d) Mrs. Zurat Beevi and (e) Mr. Abdul Rahman, entered into a compromise and settled the dispute outside the Court, and executed a registered Partition Deed dated 17.10.1983. Under the said partition, the subject property was allotted to the share of Mr. Sikkandar, the father of the 4th Respondent.

c. Under the Partition Deed dated 17.10.1983, it was agreed to withdraw the following proceedings:

a). A.S. No. 790 of 1979 filed by Mr. P.M.J. Sikkandar before the High Court, Chennai;

b). Final Decree Petition in I.A. No. 149 of 1979 in O.S. No. 364 of 1977.

Accordingly, A.S. No. 790 of 1979 filed by Mr. Sikkandar was withdrawn.

(ix) In the Final Decree Petition, i.e., I.A. No. 149 of 1979, Mrs. Mehaboob Beevi filed a counter admitting the execution of the Partition Deed dated

17.10.1983. A final decree was passed on 21.04.1988 without declaring the share of the Appellant's father, Mr. Abdul Rahman.

(x) The appeal preferred by Mr. Sikkandar in A.S. No. 558 of 1989 before the High Court, Madurai Bench, was also dismissed on 10.02.2010.

(xi) Mr. Sikkandar was enjoying the subject property absolutely from the date of partition, i.e., from 17.10.1983.

(xii) Mr. Sikkandar and his son, Mr. Sulaiman (the 4th Respondent herein), entered into a registered Partition Deed dated 03.08.1995. Under the said partition, the subject property was allotted to the share of Mr. Sulaiman under the 'B' Schedule, and he has been in effective possession thereof for the past 20 years.

(xiii) Madurai Corporation has assessed the property tax in the name of the 4th Respondent till date under Assessment No. 82189, and the e-copy of the assessment issued by the Madurai Corporation in the name of the 4th Respondent is filed in our typeset of papers.

a) The Defendant Bank submitted that, Mrs. Subaida Bibi, Mrs. Mahaboob Bibi, Mr. Sikkandar, Mrs. Zurath Bibi and Mr. Abdul Rahman settled the matter among themselves and entered into a Partition Deed dated 17.10.1983. It is also to be noted that, as per the Preliminary Decree dated 29.04.1978 in O.S. No. 364 of 1977, the Plaintiff, Mrs. Subaida Bibi, and Mrs. Mahaboob Bibi were each entitled to a 13/19th share in the buildings bearing Door Nos. 50, 51 and 52 and other properties. As regards the other defendants, their respective shares were not declared in the said decree. In any event, the matter was settled and partition was effected under a registered Partition Deed dated 17.10.1983, under which the buildings bearing Door Nos. 50, 51 and 52 were allotted to the share of Mr. Sikkandar. This fact was admitted by Mrs. Mahaboob Bibi in her counter-affidavit

filed in I.A. No. 149 of 1979 in O.S. No. 364 of 1977. The Petitioner's father, Mr. Abdul Rahman, did not file any appeal against the final decree passed by the Principal Sub-Court in I.A. No. 149 of 1979. Therefore, the legal heirs of the deceased Mr. Abdul Rahman, including the Petitioner, have no right or share in the said buildings bearing Door Nos. 50, 51 and 52. The said Mr. Sikkandar and his son, Mr. S. Sulaiman, entered into a registered Partition Deed dated 03.08.1995, under which the said buildings bearing Door Nos. 50, 51 and 52 were allotted to the share of Mr. S. Sulaiman under the 'B' Schedule, and he has been in actual possession and enjoyment thereof.

b) The Defendant Bank further submitted that, the 4th Respondent availed the public money, and the recovery proceedings were earlier obstructed by the Appellant when recovery proceedings were initiated by the Recovery Officer. The following vital facts are submitted for the consideration of this Hon'ble Tribunal.

Sl. No.	Date	Events
1	17.10.1983	Partition Deed entered into between Mr. Sikkandar and his brothers and sisters
2	12.03.1984	A.S. No. 790 of 1979 dismissed
3	03.08.1995	Partition Deed entered into between Mr. Sikkandar and his son, Mr. Sulaiman (R-4)
4	17.05.2000	Equitable Mortgage was created by R-4
5	26.10.2005	Recovery Certificate was issued
6	18.12.2006	First Sale was fixed by the Recovery Officer
7	27.02.2009	Second Sale was fixed by the Recovery Officer
8	10.02.2010	A.S. No. 558 of 1989 dismissed

c) It is further submitted that, the Petitioner's father, Mr. Abdul Rahman, had no right over the property mentioned in the appeal. Mr. Abdul Rahman did not file any appeal against the final decree passed by the Sub Court in I.A. No. 149 of 1979. Therefore, the legal heirs of

the deceased Abdul Rahman, including the Petitioners, have no right or share in the property mentioned in the appeal. The present appeal has been filed at the instigation of the 4th Respondent. Further, whenever the mortgaged property is brought for auction, the 4th Respondent instigates his close relatives to file petitions to stall the proceedings by twisting the proceedings in O.S. No. 364 of 1977.

d) It is further submitted that, the averment in Para No. 6 is not correct. The Hon'ble Court, in the final decree, held that the Plaintiff was entitled to take proceedings as the property was not divisible. Further, the shares of the other defendants, including the Petitioner's father, Mr. Abdul Rahman, were not declared in the said final decree. Further, the matter was amicably settled, and a Partition Deed dated 17.10.1983 was entered into between the following persons:

- ✓ Mr. Sikkandar Rowther – S/o. Mr. Ismail Kani Rowther
- ✓ Mr. Abdul Rahman – Father of the Petitioner herein
- ✓ Mrs. Zurat Beevi – D/o. Mr. Ismail Kani Rowther
- ✓ Mrs. Mehaboob Beevi – D/o. Mr. Ismail Kani Rowther
- ✓ Mrs. Subaida Beevi – D/o. Mr. Ismail Kani Rowther

Under the said partition, the property was allotted to the share of Mr. Sikkandar Rowther. A xerox copy of the Partition Deed is available in our typeset of papers for the perusal of this Hon'ble Court. The said Partition Deed was acted upon, and the property has been enjoyed by the 4th Respondent absolutely from 03.08.1995 onwards. He is in exclusive and absolute possession and enjoyment of the property. Likewise, the Appellant is in possession and enjoyment of Door No. 38-A. In evidence thereof, the Family Card issued to the Appellant at the said address is available in our typeset of papers. Now, with a view to stalling the recovery proceedings, the present appeal has been filed.

e) It is further submitted that, the decree obtained in O.S. No. 996 of 2009 is a collusive decree, and our Bank was not a party to the said proceedings. Hence, the said decree is not binding on the answering Respondent Bank. It is further submitted that the Petitioner and the 4th Respondent have played fraud upon the Court and obtained ex parte orders and directions to stall the recovery proceedings initiated by the Bank for recovery of the public money lent. The order passed by this Hon'ble Tribunal in O.A. No. 120 of 2002 is valid and legally enforceable. Hence, the E-Auction Sale Notice dated 02.11.2015 is valid and is not against the judgment of the Civil Court or the Hon'ble High Court.

f) It is further submitted that, Grounds 'A' to 'C' are not tenable in law. The actions of the answering Respondent Bank are just and in accordance with law and are not arbitrary. The answering Respondent Bank was not a party to the civil proceedings. Hence, the question of obeying the orders passed therein does not arise. The Petitioner is merely misleading this Hon'ble Tribunal by twisting the facts. It is further submitted that the decree was not acted upon and was superseded by the registered Partition Deed dated 17.10.1983, which was acted upon. As per the said Partition Deed, the Petitioner is enjoying the 'B' Schedule property. Hence, the present appeal is vexatious.

g) It is also submitted that, Grounds 'D' and 'E' are not tenable in law. Our Bank was not a party to the civil suit. Further, the alleged criminal proceedings have been initiated to cripple the recovery proceedings of our Bank. The criminal action is based on the alleged collusive decree obtained in O.S. No. 996 of 2009 on the file of the Additional District Munsif, Madurai Town, which was passed on

08.03.2010. The said decree is a nullity in the eye of law insofar as the answering Respondent Bank is concerned.

h) It is also submitted that, the Petitioner has no right over the property. The seventeen documents relied upon by the Petitioner have been created by him. Even in the xerox copy of the Family Card, the address is given as Door No. 38-A. The said property originally belonged to Mr. Ismail Kani Rowther and was allotted as Item No. 1 of the 'B' Schedule to Mr. Abdul Rahman, i.e., the father of the Petitioner, under the Partition Deed dated 17.10.1983. Hence, the address mentioned in the Family Card is correct. Therefore, the Petitioner is not entitled to the interim relief of stay.

i) It is further submitted that, the allegation that the Petitioner is a co-sharer is contrary to the recitals of the Partition Deed dated 17.10.1983. The Petitioner is not residing in the schedule property, and the allegation to the contrary is denied. There is no prima facie case in favour of the Petitioner, and the Respondent Bank will suffer heavy and irreparable loss, as the public money has not been recovered for the past 15 years. Hence, the Stay Petition is liable to be dismissed. There is no bona fide in the appeal.

j) It is further submitted that, the averment in Para No. 6 is not correct. The aggrieved party has not taken any steps. The Partition Deed dated 17.10.1983 was entered into between the following persons:

(i) Mr. Sikkandar Rowther, S/o. Mr. Ismail Kani Rowther;
(ii) Mr. Abdul Rahman, S/o. Mr. Ismail Kani Rowther;
(iii) Mrs. Zurath Beevi, D/o. Mr. Ismail Kani Rowther;
(iv) Mrs. Mahaboob Beevi, D/o. Mr. Ismail Kani Rowther;
(v) Mrs. Subaida Beevi, D/o. Mr. Ismail Kani Rowther.

The said Partition Deed dated 17.10.1983 was acted upon. The Applicant, Mr. Kuthupullasa's father, Mr. Abdul Rahman, was a party to the said Partition Deed. He did not take any steps to set aside the same, and his son, Mr. Kuthupullasa, the Applicant herein, has also not taken any steps. Hence, the said Partition Deed is a valid document in the eye of law. Thereafter, Mr. Sikkandar and his son, Mr. Sulaiman, entered into a Partition Deed dated 03.08.1995. Under the said partition, the property was allotted to Mr. Sulaiman under the 'B' Schedule, and he has been in effective possession and enjoyment thereof for the past 20 years and created the mortgage. Madurai Corporation has assessed the property tax in the name of the 4th Respondent, i.e., Mr. Sulaiman. The Bank filed O.A. No. 120 of 2002 for recovery by sale of the mortgaged property, and a final order was passed therein. No claim petition was filed, and the said order is valid as on date.

Therefore, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the above SARFAESI Application with cost and thus render justice.

TYPED SET OF DOCUMENTS FILED BY THE DEFENDANT BANK

Sl. No.	Date	Description
1	—	Genealogical Table
2	17.10.1983	Partition Deed entered into between Mr. Sikkandar Rowther and others
3	12.03.1984	Dismissal Order passed in Appeal No. 790 of 1979 by the High Court of Madras
4	03.08.1995	Partition Deed entered into between Mr. Sikkandar Rowther and Mr. S. Sulaiman (Document No. 3566/1995)
5	26.09.2006	Order of Attachment passed in R.P. No. 132 of 2005 in D.R.C. No. 132 of 2005 by the Debts Recovery Tribunal, Coimbatore
6	02.08.2007	Affidavit in I.A. No. 246 of 2007 in D.R.C. No. 132 of 2005 in O.A. No. 120 of 2002
7	12.07.2008	Lok Adalat Order passed in R.P. No. 296 of 2007 in O.A.

Sl. No.	Date	Description
		No. 120 of 2002 by the Debts Recovery Tribunal, Madurai
8	10.02.2010	Dismissal Order passed in A.S. No. 558 of 1989, C.M.P. No. 19283 of 2000 and C.M.P. Nos. 9356 to 9358 of 2003 by the Madurai Bench of the Madras High Court
9	—	Ration Card in Door No. 38/A
10	----	Computerized Property Tax Assessment
11	31.01.2012	Demand Notice under Section 13(2) of the SARFAESI Act
12	29.06.2012	Possession Notice
13	----	Paper Publication of the Possession Notice in Tamil
14	----	Paper Publication of the Possession Notice in English
15	02.11.2015	Mega e-Auction notice published in Tamil
16	02.11.2015	Mega e-Auction notice published in Tamil

4. *ON THE BASIS OF ABOVE PLEADINGS THE POINT WHICH ARISES FOR CONSIDERATION IS:-*

WHETHER THE APPLICANT IS ENTITLED TO GET THE RELIEFS AS PRAYED FOR?

5. Having heard the parties and after going through the entire documents available on record, this Tribunal finds that the dispute primarily relates to the right, title and interest over the schedule mentioned property and the validity of the alleged mortgage created in favour of the 2nd Respondent Bank. It is the specific case of the Applicant that the schedule property originally belonged to his paternal grandfather, Ismail Gani Rowther, who had three sons and three daughters, and that the Applicant is the son of Abdul Rahman, whereas the 3rd Respondent is the son of Sikkander. The Applicant has relied upon the earlier partition proceedings initiated in O.S.No.364 of 1977 on the file of the Principal Subordinate Judge, Madurai, wherein Subaida Bibi claimed her share in the family properties. After full trial, a final decree came to be passed on 21.04.1988 and thereafter an appeal was preferred against the said decree in A.S.No.558 of 1989 before the

Hon'ble Madurai Bench of the Madras High Court by which was dismissed.

6. It is further seen from the records that the Applicant claims right and possession over the schedule property through his father, who was a party to the aforesaid partition proceedings. The Applicant has specifically contended that the schedule property was not divided by metes and bounds and that, as per the findings rendered in the final decree, the property was indivisible in nature and was directed to be dealt with in accordance with the provisions of the Partition Act. The Applicant has also stated that he and his family members have been residing in the schedule property for several decades.

7. The crucial aspect which requires consideration by this Tribunal is the alleged partition deed dated 17.10.1983. The Applicant has specifically alleged that the said document was brought into existence during the pendency of the civil proceedings and that, on the strength of the said document, the 4th Respondent created an encumbrance over the schedule property and obtained loan facilities from the Respondent Bank. It is also the specific case of the Applicant that another partition deed dated 03.08.1995 was subsequently created during the pendency of the proceedings before the Hon'ble High Court.

8. In the considered opinion of this Tribunal, the alleged partition deed dated 17.10.1983 cannot be looked into in isolation. The said document has to be considered in the backdrop of the pending partition proceedings in O.S.No.364 of 1977 and the subsequent final decree dated 21.04.1988. When the civil Court had already adjudicated the rights of the parties in respect of the family properties and the said decree was subsequently subjected to appeal, any transaction or arrangement made during the pendency of such proceedings cannot be permitted to defeat or prejudice the rights crystallised under the decree of the competent civil Court.

9. It is further relevant to note that the alleged loan transaction and creation of mortgage in favour of the Respondent Bank took place only on 18.05.2000, subsequent to the final decree dated 21.04.1988 and the subsequent appellate proceedings. The Applicant has specifically pleaded that the Respondent Bank sanctioned the loan without properly scrutinising the title and the pending civil litigation and that the alleged mortgage was created by a person who was not the absolute owner of the entire schedule property.

10. This Tribunal further finds that the Applicant was neither a borrower nor a party to the loan transaction allegedly entered into between the Respondents. The Applicant has asserted an independent right and possession over the schedule property and has specifically challenged the authority of the 4th Respondent to create an equitable mortgage over the property in derogation of the Applicant's right and share. The Respondents, therefore, cannot enforce the alleged security interest against the right and interest of a person who had not created the mortgage and whose rights are traceable to the earlier civil Court proceedings.

11. It is also brought on record that the Applicant had instituted O.S.No.996 of 2009 before the learned Additional District Munsif, Madurai Town, seeking permanent injunction against the 4th Respondent and that an order of injunction was granted therein. The Applicant has further stated that attempts were made to interfere with his possession and that criminal proceedings were also initiated. Though the said proceedings by themselves may not determine the validity of the secured transaction, they lend support to the Applicant's contention that his possession and claim over the property were in existence much prior to the initiation of the SARFAESI proceedings.

12. The Respondent Bank subsequently proceeded against the schedule property under the SARFAESI Act and initiated proceedings for

taking physical possession. The Applicant approached the competent authority and objected to the proposed action, contending that the 4th Respondent was only a co-sharer and had no authority to create a mortgage over the entire schedule property. The Applicant has also specifically challenged the validity and enforceability of the alleged equitable mortgage.

13. Having regard to the above facts and circumstances, this Tribunal is of the considered view that the Respondent Bank cannot claim a better right or title than what the mortgagor was legally competent to create. The rights of the Applicant arising from the earlier civil proceedings and the decree cannot be defeated by a subsequent mortgage created in favour of the Respondent Bank. More particularly, when the Applicant was not a party to the loan transaction and when the property was admittedly the subject matter of earlier partition proceedings, the secured creditor ought to have established that the mortgagor possessed a clear and valid title capable of being offered as security.

14. The subsequent mortgage, therefore, cannot bind the Applicant's right, title, interest and possession over the schedule property. The alleged security interest created in favour of the Respondent Bank is consequently unenforceable against the Applicant to the extent of his lawful right and interest in the schedule property. The SARFAESI proceedings initiated by the Respondents, insofar as they seek to take possession of and sell the Applicant's property on the strength of the said mortgage, cannot be sustained.

15. In view of the foregoing discussion and considering the documentary evidence available on record, this Tribunal finds that the Applicant has established his case and is entitled to the relief sought in the present S.A. The impugned mortgage created by the 4th Respondent in favour of the Respondent Bank, insofar as it affects the right, title, interest and possession of the Applicant over the schedule property, is

held to be **not binding upon the Applicant**. Consequently, the Respondent Bank cannot proceed against the Applicant's right and interest in the schedule property under the provisions of the SARFAESI Act.

In the result, **the Securitisation Application is allowed in part**, No order as to costs with the following directions:

1) The SARFAESI measures initiated by the Respondent Bank in respect of the Applicant's right, title and interest in the schedule mentioned property are hereby set aside.

2) The Respondent Bank shall not proceed against the Applicant's right, title and interest in the schedule property under the SARFAESI Act, on the basis of the impugned mortgage, without establishing the enforceable interest of the mortgagor in accordance with law.

3) The Respondent Bank is at liberty to work out its remedies against the borrower/mortgagor and the legally enforceable interest, if any, of the mortgagor in the secured property, in accordance with law.

4) This order shall not preclude the Defendant Bank from working out its remedies for recovery of outstanding loan amount in accordance with law against the borrower, guarantors or any other person liable under the loan transaction.

Consequently, all pending IAs (if any) are also disposed of. No costs.

Dictated to LDC (KK), taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 28th August 2026.

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 03.09.2026