HC-KAR
NC: 2026:KHC-D:14312
CRP No. 100142 of 2025
CNR: KAHC020236192025

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 29TH DAY OF AUGUST, 2026

R

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CIVIL REVISION PETITION NO. 100142 OF 2025

BETWEEN:

M/S. TYGER CAPITAL LIMITED,
(FORMERLY KNOWN AS ADANI CAPITAL PVT. LTD),
HAVING ITS HEAD OFFICE AT 19TH FLOOR,
RUPA RENAISSANCE PLOT #D-33, D-207,
MIDC ROAD, TTC INDUSTRIAL AREA,
JUINAGAR, NAVI MUMBAI-400705,
BRANCH OFFICE AT: 1-39-5/2 GROUND FLOOR,
S V COMPLEX, NEAR AYYAPPA TEMPLE,
JALAHALLI WEST, S M ROAD,
BANGALORE-560015,
REP. BY ITS SENIOR LEGAL MANAGER,
SRI. B.K. NAVEEN S/O KUBERGOUDA,
AGE: 39 YEARS, OCC. SENIOR LEGAL MANAGER,
C/O AT: 1-39-5/2, GROUND FLOOR,
S V COMPLEX, NEAR AYYAPPA TEMPLE,
JALAHALLI WEST, S.M. ROAD,
BANGALORE-560015.

... PETITIONER

(BY SMT. SHRIYA S. KATAGIMATH, ADVOCATE)

AND:

1. LALITA W/O TIPPAYYA CHIKKAMATH,
AGE: 75 YEARS, OCC. HOUSEHOLD,
R/AT: PALA VILLAGE, MUNDAGOD TALUK,
DIST. UTTAR KANNADA,
KARNATAKA-581346.

2. SOUBHAGYA
W/O CHANNABASAYYA HIREMATH,
AGE: 52 YEARS, OCC. HOUSEHOLD,
R/AT: H.NO.251, RADHAKRISHAN NAGAR,
GOKUL ROAD, GANDHI NAGAR,
HUBBALLI, DIST. DHARWAD-580030.

3. MR. RAJENDRA S/O TIPPAYYA CHIKKAMATH,
AGE: 45 YEARS, OCC. BUSINESS,
R/AT: PALA VILLAGE, MUNDAGOD TALUK,
DIST. UTTAR KANNADA,
KARNATAKA-581346.

4. MRS. ASHWINI RAJENDRA CHIKKAMATH,
AGE: 33 YEARS, OCC. HOUSEHOLD,
R/AT: PALA VILLAGE, MUNDAGOD TALUK,
DIST. UTTAR KANNADA,
KARNATAKA-581346.

… RESPONDENTS

(BY SRI. IRANAGOUDA K. KABBUR, ADV. FOR R1 AND R2;
SRI. ABHISHEK G. HOSAKERI, ADVOCATE FOR R3;
NOTICE TO R4 IS SERVED)

THIS CRP IS FILED UNDER SECTION 115 OF CPC, PRAYING TO CALL FOR THE ENTIRE RECORDS PERTAINING TO O.S. NO.44/2024 PENDING ON THE FILE OF SENIOR CIVIL JUDGE AND PRINCIPAL JMFC, YELLAPUR, SITTING AT: MUNDGOD; SET ASIDE THE IMPUGNED ORDER DATED 09.09.2025 PASSED BY THE SENIOR CIVIL JUDGE AND PRINCIPAL JMFC, YELLAPUR, SITTING AT: MUNDGOD BY DISMISSING THE I.A. NO.5/2025 FILED BY THE PETITIONER AND ALLOW THE SAID APPLICATION, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

ORAL ORDER

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

This Civil Revision Petition is directed against the order dated 09.09.2025 passed in O.S. No.44/2024 by the learned Senior Civil Judge and Principal JMFC, Yellapur, whereby the application filed by the petitioner under Order VII Rule 11(d) read with Section 151 of the Code of Civil Procedure, 1908, (for short ‘CPC’) and Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, “the SARFAESI Act”) came to be rejected.

2. Heard the learned counsel for the petitioner-Bank and the learned counsel appearing for the respondents. Perused the pleadings, the impugned order and the material placed on record.

3. The controversy in the present revision petition essentially relates to the extent to which the jurisdiction of the Civil Court is excluded by Section 34 of the SARFAESI Act when a suit concerning a mortgaged property is instituted by persons claiming independent rights in the property, particularly where

such suit is styled as a suit for partition and separate possession and is accompanied by a declaration that a mortgage created by one of the co-sharers is not binding upon the plaintiffs' share.

4. Since the precise nature of the rights asserted by the plaintiffs, the character of the suit property, the status of the plaintiffs vis-à-vis the borrower, the circumstances in which the mortgage came to be created and the exact nature of the reliefs sought are matters which have to be appreciated from the pleadings in the suit, the legal issue requires examination in some detail.

5. In the light of the rival submissions, the following points arise for consideration:

i. Whether the jurisdiction of the Civil Court under Section 9 of the CPC is barred by Section 34 of the SARFAESI Act in every suit instituted by family members or co-sharers concerning a property over which the secured creditor has created or seeks to enforce a security interest?

ii. Whether a suit instituted by family members/co-sharers, the substance of which is to question the legality or validity of measures taken or proposed to be taken by the secured creditor under Section 13(4) of the SARFAESI Act, is maintainable before the Civil Court?

iii. Whether a suit instituted by a non-alienating coparcener/co-sharer asserting an independent pre-existing right in the property and seeking partition and separate possession, coupled with a declaration that a mortgage created by another co-sharer is not binding upon his/her share, stands on a different footing?

iv. Whether the mere presence of a prayer for declaration concerning the mortgage would, by itself, attract the bar under Section 34 of the SARFAESI Act, notwithstanding that the principal relief is partition and determination of the plaintiff's independent share?

v. Whether the plaint can be rejected under Order VII Rule 11(d) of the CPC when, on a meaningful reading of the plaint, at least one substantive relief is within the jurisdiction of the Civil Court?

Finding on the above points:

Scope of Section 34 of the SARFAESI Act

6. Section 9 of the CPC confers jurisdiction upon Civil Courts to try all suits of a civil nature except those whose cognizance is either expressly or impliedly barred. It is equally well settled that exclusion of the jurisdiction of the Civil Court is not readily to be inferred. The principle governing exclusion of jurisdiction is that such exclusion must either be expressly provided by the statute or arise by necessary implication from the statutory scheme.

7. At the same time, where Parliament creates a special mechanism for adjudication of a particular class of disputes and expressly excludes the jurisdiction of the Civil Court in respect of matters falling within the jurisdiction of such statutory forum, the Civil Court cannot assume jurisdiction

merely because the dispute has a civil complexion. The SARFAESI Act constitutes such a special statutory mechanism insofar as enforcement of security interest is concerned.

8. Section 13 of the SARFAESI Act enables a secured creditor, upon the borrower committing default and the account being classified as a non-performing asset, to enforce the security interest without intervention of the Civil Court, subject to the conditions prescribed by the Act.

9. Section 13(4) specifies the measures which may be taken by the secured creditor when the borrower fails to discharge the liability within the statutory period. Such measures include taking possession of the secured assets and taking recourse to the other measures contemplated under the provision. Section 17 provides a remedy to any person aggrieved by any of the measures referred to in Section 13(4).

10. Section 34, in turn, provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal is empowered by or under

the SARFAESI Act to determine. Section 35 gives the provisions of the SARFAESI Act overriding effect over other laws to the extent of inconsistency. The ambit of this statutory bar came up for consideration before the Hon'ble Supreme Court in ***Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311.***

11. The Hon'ble Supreme Court recognised that the SARFAESI Act creates a special mechanism for enforcement of security interest and that the jurisdiction of the Civil Court is excluded in respect of matters which fall within the jurisdiction of the Tribunal. At the same time, the Court recognised a limited area in which recourse to the Civil Court may be permissible, including cases where the action of the secured creditor is alleged to be fraudulent or the claim is such that it does not require adjudication under the statutory mechanism.

12. The principle emerging from ***Mardia Chemicals*** (supra) is, therefore, not that every dispute concerning a secured property is barred from the Civil Court. The enquiry necessarily remains as to the nature of the dispute and the

relief sought, and whether such dispute is one which the DRT is empowered to determine under the SARFAESI Act.

13. In ***Jagdish Singh v. Heeralal and Others, (2014) 1 SCC 479,*** the Hon'ble Supreme Court considered the question in the context of a suit instituted by members of a family claiming rights in property against which the secured creditor had initiated measures under the SARFAESI Act. The Hon'ble Supreme Court emphasised the width of the expression **"any person"** occurring in Section 17 and held that the remedy under Section 17 is not confined to the borrower alone. A person affected by the measures taken under Section 13(4) can invoke the jurisdiction of the DRT.

14. The Court further held that the expression "in respect of any matter" occurring in Section 34 is of wide amplitude and takes within its fold the measures undertaken by the secured creditor under Section 13(4). Where the grievance is against such measures, the remedy lies before the DRT and not before the Civil Court.

15. The principle was reiterated in ***M/s Sree Anandhakumar Mills Ltd. v. M/s Indian Overseas Bank and Others, Civil Appeal No(s). 7214-7216 of 2012*** wherein the Hon'ble Supreme Court considered a partition suit instituted in the backdrop of proceedings under the SARFAESI Act. The Hon'ble Supreme Court, relying upon ***Jagdish Singh*** (supra) held that where the partition suit was in substance connected with and sought to interfere with the measures undertaken under the SARFAESI Act, the Civil Court could not entertain the suit and the aggrieved person had an efficacious remedy under Section 17.

16. Thus, where the substance of the civil action is an attack upon the measures of the secured creditor under Section 13(4), the mere description of the suit as a partition suit cannot confer jurisdiction upon the Civil Court.

17. This distinction assumes considerable significance. A family member may institute a proceeding styled as one for partition, declaration or injunction. However, the nomenclature of the suit is not decisive. The Court has to examine the substance of the relief. For instance, if the plaintiffs plead that

the Bank has taken symbolic or physical possession of the property and seek a declaration that such possession is illegal, coupled with an injunction restraining the Bank from taking further steps pursuant to the notice under Section 13(4), or seek to invalidate the proposed auction or sale, the principal controversy is undoubtedly one concerning the measures taken by the secured creditor. Such a dispute squarely falls within the statutory remedy under Section 17.

18. The Civil Court cannot permit the plaintiffs to achieve indirectly, by describing the proceeding as a partition suit, what they could not directly achieve by challenging the SARFAESI measures before the Civil Court.

19. The distinction may be illustrated thus:

Illustration (a): A borrower creates a mortgage over property. On default, the Bank issues notice under Section 13(2), takes possession under Section 13(4) and initiates auction proceedings. Thereafter, the borrower’s wife, children or other family members institute a suit seeking a declaration that the possession notice is illegal, the auction notice is void and the Bank should be restrained from selling or taking possession of the property.

Though the plaintiffs may describe themselves as co-sharers or family members and may incidentally plead that they have an interest in the property, the immediate and substantial relief is against the measures undertaken by the secured creditor. The proper forum for such grievance is the DRT under Section 17.

Illustration (b): A co-sharer or coparcener, who is not the borrower or guarantor and who asserts an independent pre-existing right in ancestral/coparcenary property, institutes a suit seeking determination of his/her share and partition by metes and bounds. The plaintiff further seeks a declaration that a mortgage subsequently created by another co-sharer, without the plaintiff joining in or consenting to the transaction, does not bind the plaintiff's independent share.

In such a case, the central controversy may not be the legality of the Bank's enforcement measure at all. The foundational controversy may be what is the plaintiff's pre-existing share in the property and whether the mortgage created by another co-sharer can bind that share. The distinction between the two situations is therefore one of substance and not form.

THE DEVELOPMENT OF LAW AFTER JAGDISH SINGH

20. The subsequent exposition of law by the Hon'ble Supreme Court assumes importance while examining the breadth of the proposition laid down in ***Jagdish Singh*** (supra). In ***Central Bank of India v. Prabha Jain and Others, (2025 SCC OnLine SC 121)*** the Hon'ble Supreme Court examined the scope of the DRT's jurisdiction and, in that context, clarified the extent to which the reasoning in ***Jagdish Singh*** (supra) could be applied to a suit involving independent civil rights.

21. The Hon'ble Supreme Court noticed that the DRT is empowered to examine the legality of the measures taken by the secured creditor under the SARFAESI Act. However, the Tribunal does not thereby acquire unlimited jurisdiction to adjudicate every independent civil right merely because the property involved happens to be a secured asset.

22. In particular, the Supreme Court noticed that the DRT has no jurisdiction to grant a decree of partition. It observed that ***Jagdish Singh*** (supra) had dealt with the measures taken under Section 13(4), but there was no determination therein that the DRT possessed jurisdiction to grant a decree of partition. Consequently, ***Jagdish Singh*** (supra) could not be treated as laying down a proposition that every partition suit, irrespective of its nature and the reliefs sought, is barred by Section 34. This clarification is of considerable significance.

23. The statutory bar under Section 34 is not a general ouster of the jurisdiction of the Civil Court over every dispute concerning a secured asset. The language of Section 34 itself is determinative. The Civil Court is barred from entertaining a suit "in respect of any matter" which the DRT or DRAT is empowered by or under the SARFAESI Act to determine.

24. The corollary necessarily follows that if a particular relief is one which the DRT has no statutory power to grant, the Civil Court's jurisdiction in respect of that independent relief

cannot be said to be ousted merely because the property happens to be subject to a security interest.

25. This position is also consistent with the general principle stated in ***Dwarka Prasad Agarwal v. Ramesh Chander Agarwal, (2003) 6 SCC 220***, that the jurisdiction of the Civil Court under Section 9 CPC is of wide amplitude and exclusion thereof must not be readily inferred.

26. The Tribunal is a creature of statute. Its jurisdiction must necessarily remain within the four corners of the statute creating it. It cannot assume jurisdiction over matters which Parliament has not entrusted to it. Consequently, the enquiry under Section 34 must be undertaken by identifying the precise matter in dispute and the precise relief claimed, and then determining whether that matter is one which the DRT is statutorily empowered to determine.

PARTITION BY A NON-ALIENATING COPARCENER

27. The position becomes particularly important where the plaintiff is not the person who created the mortgage. A coparcener asserting an independent right by birth does not

necessarily claim through the borrower. The plaintiff may contend that the property is joint family/coparcenary property and that, by operation of the applicable personal law, the plaintiff possessed an undivided interest in the property independently of the borrower. In such a case, the mortgage created by one co-sharer may itself be the subject matter of the civil adjudication to the limited extent of determining whether the transaction binds the plaintiff's independent share.

28. The question is fundamentally different from a challenge to the Bank's statutory action.

29. For example, assume that 'A', 'B' and 'C' are coparceners in an undivided property. 'A', without the participation of 'B' and 'C', creates a mortgage in favour of a Bank. Subsequently, after default, the Bank initiates measures under Section 13(4).

30. If 'B' institutes a suit seeking:

1. declaration of his/her independent undivided share;
2. partition and separate possession of that share; and

3. a declaration that the mortgage created by 'A' does not bind 'B's share,

the Civil Court is called upon to adjudicate a question which is not merely whether the Bank acted in accordance with Section 13(4). It is required to determine the antecedent civil rights of 'B' in the property.

31. The determination of such share is not a relief contemplated under Section 17 of SARFAESI Act. The position, however, would be materially different if 'B' were to seek an injunction restraining the Bank from taking possession or conducting an auction, on the ground that the Bank's measures under Section 13(4) are illegal. The latter relief is directly concerned with the statutory measures. Therefore, while the underlying civil right may furnish the foundation for the plaintiff's claim, the forum for questioning the measure undertaken by the secured creditor remains with DRT.

32. This distinction prevents two jurisdictions from being confused:

(a) **Civil Court:** determination of independent civil rights, share, partition and, where legally permissible, the binding nature of a mortgage inter se the co-sharers;

(b) **DRT:** determination of the legality or otherwise of measures taken by the secured creditor under the SARFAESI Act.

<u>*CENTRAL BANK OF INDIA v. PRABHA JAIN* (supra) — EFFECT ON *JAGDISH SINGH (supra)*</u>

33. The judgment in ***Central Bank of India v. Prabha Jain*** (supra) is particularly relevant to the controversy at hand.

34. The Hon'ble Supreme Court examined the earlier approach in ***Jagdish Singh*** (supra) and noticed that while ***Jagdish Singh*** (supra) correctly recognised the bar insofar as measures under Section 13(4) were concerned, the judgment did not undertake an examination of whether the DRT had jurisdiction to grant a decree of partition. The Supreme Court observed, in substance, that the DRT's power under Section 17 is confined to examination of the measures taken by the secured creditor and the consequential reliefs contemplated by

the statutory scheme. Since the DRT has no power to partition properties, a Civil Court's jurisdiction to grant a decree of partition cannot automatically be said to be ousted.

35. The Hon'ble Supreme Court further recognised the distinction between the relief concerning partition and the relief concerning the enforcement action. Therefore, ***Jagdish Singh*** (supra) and ***SreeAnandhakumar Mills*** (supra) continue to operate in their proper field: where the substance of the suit is a challenge to SARFAESI measures, the Civil Court has no jurisdiction.

36. However, those judgments cannot be read as establishing an absolute proposition that every suit for partition concerning property over which a security interest exists is barred, irrespective of the plaintiff's status, the character of the property, the independent right asserted and the nature of the relief claimed.

EFFECT OF A DECLARATION THAT THE MORTGAGE IS NOT BINDING

37. The next question is whether the inclusion of a prayer seeking a declaration that the mortgage deed is not binding upon the plaintiff's share necessarily attracts Section 34. The answer cannot be determined merely by looking at the words used in the prayer.

38. If the declaration is sought for the purpose of establishing that the plaintiff had an independent pre-existing share and that the mortgage created by another co-sharer cannot operate upon that share, the Court is essentially called upon to determine the inter se proprietary rights of the parties.

39. Such a declaration is conceptually different from a declaration that the SARFAESI possession notice, auction notice, sale proceedings or other measures undertaken under Section 13(4) are illegal.

40. To illustrate:

Where the prayer reads, in substance:

"Declare that the plaintiff has an undivided 1/4th share in the suit property and that the mortgage created by defendant No.1, without the consent or participation of the plaintiff, is not binding upon the plaintiff's 1/4th share and grant partition and separate possession, "the principal issue is the plaintiff's independent proprietary right.

Conversely, where the prayer reads: "Declare that the possession notice issued by the Bank under Section 13(4) is illegal, void and without authority of law and restrain the Bank from taking possession or conducting auction", the controversy is directly and substantially concerned with SARFAESI measures. The two cannot be placed in the same category merely because both proceedings concern the same secured property.

41. At the same time, the Civil Court, while entertaining a genuine partition action, cannot issue an order which has the effect of nullifying or directly restraining a statutory measure which falls within the jurisdiction of the DRT. The existence of civil jurisdiction to determine an independent proprietary right does not confer jurisdiction upon the Civil Court to adjudicate the legality of a measure undertaken under Section 13(4). The two proceedings must therefore be kept conceptually distinct.

42. The Hon'ble Supreme Court, while considering the law after ***Central Bank of India v. Prabha Jain,*** (supra) noted that the DRT is a creature of statute and that its jurisdiction under the SARFAESI Act does not extend to granting a decree of partition. It consequently held, on the facts before it, that the Civil Court could exercise jurisdiction where the plaintiff asserted an apparent independent coparcenary interest and sought partition and separate possession, even though the secured creditor had initiated measures against the property.

43. The decision is useful not because it creates an unrestricted exception to Section 34, but because it reinforces the necessity of identifying the true nature of the relief. A plaintiff cannot avoid Section 34 merely by adding a prayer for partition to what is otherwise a direct challenge to SARFAESI measures. Likewise, a secured creditor cannot contend that Section 34 automatically bars every civil action merely because the property has been mortgaged and SARFAESI proceedings have commenced. The Court has to undertake a meaningful examination of the plaint.

ORDER VII RULE 11(d) CPC — SCOPE OF EXAMINATION

44. The present proceedings arise at the stage of an application under Order VII Rule 11(d) CPC.

45. The scope of enquiry under Order VII Rule 11(d) is well settled. The Court has to examine the averments contained in the plaint, read as a whole, along with the documents relied upon in the plaint, to determine whether the suit appears from the statements made therein to be barred by any law.

46. The defence of the defendant cannot ordinarily be imported into such an enquiry. At the same time, the Court is not required to accept the plaint mechanically or merely go by the form of the relief. The plaint has to be read meaningfully and as a whole to ascertain the real nature of the cause of action and the relief sought.

47. This principle becomes especially significant in SARFAESI cases. If the plaint, on its own showing, discloses that the plaintiffs are seeking to set aside or restrain measures under Section 13(4), the bar under Section 34 can operate at the threshold.

48. But if the plaint discloses a substantive independent civil cause of action such as determination of an antecedent share, partition and separate possession and the declaration concerning the mortgage is consequential to such determination, the Court has to consider whether the entire suit can be said to be barred. The mere existence of a prayer which touches upon the mortgage does not, by itself, answer that question.

PARTIAL REJECTION OF PLAINT

49. The decision of the Hon'ble Supreme Court in ***Central Bank of India v. Prabha Jain***(supra) assumes significance also from another perspective.

50. The Hon'ble Supreme Court has held that where one relief is within the jurisdiction of the Civil Court and another relief may be barred by law, the plaint cannot be rejected in part under Order VII Rule 11(d). The Court cannot split the plaint and reject only a particular relief at the threshold. The Hon'ble Supreme Court observed that even where one relief is barred, if another substantive relief

survives, the plaint as a whole cannot be rejected under Order VII Rule 11.

51. Therefore, even in a case where a suit contains multiple prayers, the Court has to ascertain whether the suit as a whole is barred.

52. For example, if the plaintiff seeks:

1. declaration of his independent share;
2. partition and separate possession; and
3. declaration that a mortgage created by another co-sharer is not binding upon that share,

the existence of the third prayer cannot automatically result in rejection of the entire plaint if the first two reliefs disclose a civil cause of action within the jurisdiction of the Civil Court.

53. On the other hand, if the plaint, on a meaningful reading, reveals that the prayers for partition and declaration are merely incidental or camouflage and that the real object is to restrain the Bank from taking possession, conducting auction or otherwise enforcing the security interest, the Court must

examine the substance of the suit and the bar under Section 34.

54. The test, therefore, is not merely: “Does the suit concern mortgaged property?”

The appropriate test is:

“What is the real controversy which the Civil Court is called upon to adjudicate, and is that controversy one which the DRT is empowered to determine under the SARFAESI Act?”

55. This test reconciles Section 9 CPC with Section 34 of the SARFAESI Act.

EFFECT OF THE MORTGAGE ON THE BORROWER’S SHARE

56. A further distinction is necessary between determining the extent of the plaintiff’s share and determining the consequences of the security interest over the borrower’s share.

57. A partition decree does not, merely by determining the shares, extinguish an otherwise valid security interest created by a co-sharer over his/her interest.

58. The Civil Court, while determining the rights of the parties, must necessarily take into account the subsisting encumbrance in accordance with the applicable law.

59. Thus, the proposition that the Civil Court has jurisdiction to determine the plaintiff's independent share cannot be construed as a proposition that the Bank's security interest is rendered ineffective merely because a partition suit has been filed.

60. Equally, the Bank's right to enforce its security interest cannot be enlarged to an extent greater than the right of the person who created the security.

61. If the plaintiff establishes an independent proprietary interest which was not conveyed, mortgaged or otherwise encumbered by the plaintiff, the question whether the mortgage binds that independent interest is a matter

requiring adjudication on the basis of the pleadings, documents and applicable substantive law.

62. That question cannot be answered merely by invoking Section 34.

APPLICATION OF THE PRINCIPLES TO THE PRESENT CASE

63. In the present case, the petitioner-Bank places reliance upon the fact that credit facilities were availed, the schedule property was mortgaged, default occurred, the account was classified as NPA, notice under Section 13(2) was issued and thereafter measures under Section 13(4) were initiated.

64. The petitioner accordingly contends that the suit instituted by the respondents is an attempt to obstruct the SARFAESI proceedings and that the plaintiffs ought to approach the DRT under Section 17.

65. On the other hand, the plaint contains pleadings alleging that the plaintiffs possess independent rights in the

suit property; that the property is subject to an antecedent family arrangement/right; that the relinquishment deed relied upon by one of the co-sharers is fraudulent and ineffective; that the mutation was consequently illegal; and that, without any valid title or authority over the plaintiffs' alleged share, the co-sharer proceeded to create a mortgage in favour of the Bank.

66. The plaint further contains a prayer for partition and separate possession and a declaration concerning the binding nature of the mortgage.

67. The pleadings also contain allegations against the Bank concerning the circumstances in which the mortgage was created and the alleged failure to properly verify title.

68. At this stage, however, the Court is not required to adjudicate upon the truth or otherwise of those allegations. What is required is to determine whether, assuming the material averments in the plaint to be correct for the limited purpose of Order VII Rule 11(d), the suit as a whole is barred by Section 34.

69. The answer to that question necessarily depends upon the true nature of the relief.

70. If, on a meaningful reading of the plaint, the dominant and substantive relief is found to be a challenge to the possession notice, the enforcement proceedings, the proposed sale or any other measure undertaken under Section 13(4), the ratio of ***Jagdish Singh*** (supra) and ***Sree Anandha kumar Mills*** (supra) would squarely apply.

71. If, however, the plaintiffs are found to be non-borrower coparceners/co-sharers asserting an independent pre-existing right and the principal relief is determination of their share and partition, the subsequent clarification in ***Central Bank of India v. Prabha Jain*** (supra) becomes directly relevant.

72. The mere fact that the mortgage is also sought to be declared not binding upon the plaintiffs cannot, by itself, result in the conclusion that the entire suit is barred.

73. The Court would have to examine whether such declaration is merely consequential to the determination of the

plaintiff's independent share or whether it is in substance a prayer for nullifying the Bank's statutory enforcement action.

74. The distinction is fine but legally decisive. At this juncture, this Court also cannot lose sight of the fact that the application under Order VII Rule 11(d) has to be considered on the plaint averments.

75. If the plaintiffs have pleaded an independent right in the suit property and seek partition and separate possession on that basis, the Court cannot, at the threshold, assume that such right is false merely because the Bank disputes it. Similarly, the Court cannot assume that the mortgage is invalid merely because the plaintiffs allege that it is not binding upon their share.

76. Both questions are matters for adjudication unless the plaint itself demonstrates that the suit is barred. Equally, the plaintiffs cannot rely upon the mere label of "partition" to obtain from the Civil Court an injunction restraining the secured creditor from exercising statutory powers under Section 13(4).

77. The reliefs sought in the plaint, which assume significance for determining the present controversy, read thus:

> *"a) To pass a preliminary decree in favour of the plaintiffs by holding that plaintiffs are entitled to 1/3rd share each in the suit property and partition and separate possession by metes and bounds be ordered to be effected.*
>
> *b) It be declared that the alleged mutation entry dated 09-02-2017 in respect of suit property as illegal, null and void and not binding on plaintiffs.*
>
> *c) It be declared that the alleged mortgage transaction entered into between defendant No.1 and 2 on 25-05-2022 as being illegal, null and void and as not binding on plaintiffs.*
>
> *d) It is prayed that the defendant No.3 his men, agents and servants and representatives be restrained permanently from interfering with the peaceful possession of the suit property by the plaintiffs.*
>
> *e) A Court Commissioner may kindly be appointed to effect the partition and put the plaintiffs in actual and physical possession of their 1/3rd share each in suit property."*

78. A meticulous examination of the above prayers, particularly prayers (c) and (d), makes it evident that the suit cannot be regarded as a mere suit for partition and separate possession.

79. The plaintiffs undoubtedly seek a declaration of their alleged share and a preliminary decree for partition. However, they simultaneously seek a declaration that the mortgage transaction dated 25.05.2022 is illegal, null and void and not binding upon them, and, more importantly, seek a permanent injunction against defendant No.3-Bank, its men, agents, servants and representatives from interfering with their possession of the suit property.

80. The latter reliefs have to be examined in the backdrop of the SARFAESI proceedings initiated by defendant No.3-Bank.The pleadings in the plaint themselves disclose the real nature and object of the proceedings.

81. In paragraph 7 of the plaint, the plaintiffs plead that after the demise of the propositus Tippayya, defendant No.1 allegedly created a sham and bogus relinquishment deed; that

the signatures of the plaintiffs were forged; that the relinquishment deed was unregistered and non-est; and that defendant No.1 thereafter caused his name to be entered in the Panchayat records on the basis of the said document.

82. The plaint proceeds to specifically allege:

> *"Further, it is submitted that the defendant No.1 and his wife have availed loan from defendant No.2 financial institution. Based on the aforesaid illegal mutation entry the defendant No.1 has executed a mortgage deed in favor of defendant No.3 and got created a charge over the suit property to avail the aforesaid loan."*

83. The plaintiffs further allege that the officials of the financial institution were in collusion with defendant No.1 and fraudulently created a charge over the suit property without defendant No.1 having absolute right, title and interest therein.

84. The allegations become even more specific in paragraph 10 of the plaint. The plaintiffs allege that defendant No.1 was a chronic alcoholic and that the officials of defendant No.3 took undue advantage of the same and fraudulently

created the mortgage. They further allege that the Bank officials had not obtained a legal scrutiny report concerning the property, had violated the applicable rules and regulations and had acted without prudence and diligence in sanctioning the loan.

85. The plaint concludes this part of the averment by alleging that:

> *"All these facts clearly establish that the defendants in collusion played mischief and fraud upon the plaintiffs. Hence, the said alleged mortgage deed, which is tainted with fraud, is illegal, null and void, has no binding effect on legitimate right, title and interest of plaintiffs in and over the suit property."*

86. Paragraph 13 of the plaint is even more revealing as to the actual grievance against the secured creditor. The plaintiffs specifically plead that:

> *"based on the alleged illegal mortgage deed the executives of Defendant No.3 are illegally and high handedly trying to trespass the suit property with the help of their henchmen and have been interfering with*

peaceful possession and enjoyment of the suit property by the plaintiffs."

87. They further plead that in June 2024 the officials of defendant No.3 allegedly entered the property and threatened plaintiff No.1 with dispossession.

88. Thus, the pleadings cannot be read in isolation from the reliefs sought. When the averments in paragraphs 7, 10 and 13 are read conjointly with prayers (c) and (d), the real controversy which the plaintiffs seek to place before the Civil Court becomes apparent.

89. The plaintiffs are not merely seeking determination of their independent share in the suit property. They are seeking to invalidate the mortgage created in favour of the secured creditor and to restrain the secured creditor from proceeding against the mortgaged property. It is thereafter that the present suit came to be instituted.

90. The timing of the suit, therefore, cannot be divorced from the nature of the reliefs sought and the averments contained in the plaint. If the suit were genuinely

confined to the plaintiffs' independent civil rights, the plaintiffs could have sought determination of their shares and partition, leaving the secured creditor to enforce its security interest in accordance with law over the interest of the mortgagor.

91. That is not the manner in which the present plaint has been framed. The plaintiffs have specifically sought a declaration that the mortgage transaction itself is illegal, null and void, and have sought a permanent injunction against the secured creditor from interfering with possession of the property.

92. The reliefs are therefore not merely consequential to partition. They directly operate upon the mortgage and the consequent enforcement of the security interest. The fact that the plaintiffs are the mother and daughter/sister of defendant No.1 does not alter this conclusion.

93. The status of the plaintiffs as family members or alleged coparceners may be relevant if they were independently asserting their share in the property. But once the relief sought before the Civil Court is examined at a micro level, it becomes

clear that the plaintiffs seek not merely recognition of their alleged share but also to nullify the security interest created in favour of the Bank and prevent the Bank from exercising its statutory remedies. The plaintiffs cannot, by placing a prayer for partition at the forefront, bring within the jurisdiction of the Civil Court a dispute which, in substance, concerns the enforcement of the security interest by the secured creditor.

94. In a genuine partition suit, the Civil Court may be called upon to determine the shares of the parties, effect partition and thereafter consider the effect of an encumbrance created by one of the co-sharers upon the share which ultimately falls to such co-sharer. Such a suit is qualitatively different from a proceeding in which the plaintiffs themselves plead that the Bank has acted fraudulently in creating the mortgage, that the mortgage is illegal and void, that the Bank has entered the property pursuant to such mortgage and that the Bank should be permanently restrained from interfering with their possession.

95. The latter is, in substance, a challenge to the secured creditor's action.

96. The ratio of ***Jagdish Singh*** (supra), therefore becomes attracted to the present factual situation. The Hon'ble Supreme Court has held that where an aggrieved person seeks to question the measures taken by the secured creditor under Section 13(4), the remedy is under Section 17 before the DRT and the jurisdiction of the Civil Court is barred by Section 34 of the SARFAESI Act.

97. Likewise, the principle reiterated in ***Sree Anandhakumar Mills Ltd.*** (supra) is attracted where the civil proceeding, though couched in terms of civil rights, seeks to interfere with the measures undertaken by the secured creditor.

98. The decision in ***Central Bank of India v. Prabha Jain***, (supra), does not assist the plaintiffs on the facts pleaded in the present case. The said decision does not lay down that every suit containing a prayer for partition is maintainable merely because the DRT has no jurisdiction to pass a decree of partition.

99. The ratio is that the Court must ascertain the nature of the independent relief and cannot reject the entire plaint where a substantive civil relief survives merely because another relief may fall within the statutory jurisdiction of the DRT.

100. The present case stands on a different footing because, on a meaningful and holistic reading of the plaint, the relief against the Bank is not incidental or collateral. The challenge to the mortgage and the restraint against the Bank constitute an integral part of the plaintiffs' cause of action. In other words, the present case cannot be brought within the principle that a non-alienating coparcener is merely seeking a declaration of an independent share and partition while leaving the secured creditor's enforcement rights untouched.

101. On the contrary, the plaintiffs have specifically sought to have the mortgage itself declared illegal, null and void and have further sought a permanent injunction restraining defendant No.3-Bank from interfering with the property. Thus, the plaintiffs seek to achieve through the Civil

Court what the statutory scheme requires them to challenge before the DRT.

102. The reliance placed upon ***Mardia Chemicals*** (supra) also cannot come to the aid of the plaintiffs merely because the plaint contains allegations of fraud. The relevant question is whether the substance of the relief sought is one which the DRT is empowered to determine. The allegations of fraud, in the present case, are inseparably connected with the creation of the mortgage in favour of the Bank and the subsequent steps taken by the Bank pursuant thereto. They cannot be treated as an independent civil dispute divorced from the secured creditor's enforcement action.

103. More importantly, the plaintiffs have themselves pleaded that the officials of defendant No.3 are attempting to interfere with their possession "based on the alleged illegal mortgage deed". The allegation of interference is thus directly linked to the mortgage and the Bank's enforcement of its security interest.

104. Prayer (d), which seeks a permanent injunction against defendant No.3 and its representatives, has necessarily to be understood in this factual context. The effect of granting such relief would be to restrain the secured creditor from enforcing its security interest. Such a relief cannot be granted by the Civil Court in view of Section 34 of the SARFAESI Act. The statutory remedy under Section 17 is not confined to the borrower. It is available to any person aggrieved by the measures referred to in Section 13(4). Therefore, the fact that the plaintiffs are not the principal borrowers does not, by itself, confer jurisdiction upon the Civil Court when their grievance is against the measures taken by the secured creditor. If the plaintiffs contend that the mortgage does not bind their independent share, or that the secured creditor has proceeded against property beyond the interest validly created in its favour, such grievance, insofar as it challenges the measures taken under Section 13(4), has to be worked out in the statutory forum.

105. There is yet another aspect which cannot be overlooked. The plaintiffs have sought a declaration that the mortgage transaction itself is "illegal, null and void". The mortgage is the very foundation upon which the secured creditor claims the security interest. The SARFAESI measures are consequential to that security interest.

106. Therefore, a declaration by the Civil Court that the mortgage itself is illegal and null and void, coupled with a permanent injunction against the Bank, would directly undermine and nullify the statutory enforcement process. This is precisely the kind of interference which Section 34 seeks to prevent.

107. The distinction between a declaration that a mortgage is not binding upon the plaintiff's independent share and a declaration that the mortgage transaction itself is illegal, null and void, assumes significance.

108. In a genuine partition proceeding, the former relief may arise incidentally while determining the inter se rights of the co-sharers. But in the present case, the plaintiffs have not

merely sought to protect their alleged share. They have sought to invalidate the mortgage transaction itself and, on that basis, restrain the secured creditor from dealing with the property. The relief as framed, therefore, travels beyond a pure determination of shares.

109. Consequently, the plaint, when read as a whole, discloses that the alleged partition is being used as the vehicle through which the plaintiffs seek to challenge and obstruct the enforcement of the mortgage by the secured creditor.

110. The core thrust of the suit is not partition simpliciter. The core thrust is the challenge to the mortgage and the consequential action of the secured creditor under the SARFAESI Act. This Court is conscious that exclusion of the jurisdiction of the Civil Court under Section 34 has to be strictly construed and that every civil dispute concerning a secured property cannot be treated as barred.

111. However, the present case falls within the prohibited field because the reliefs sought, particularly prayers (c) and (d), when read with the averments in paragraphs 7, 10

and 13 of the plaint, demonstrate that the plaintiffs seek to nullify the security interest and prevent the secured creditor from exercising the statutory measures available under the SARFAESI Act. The Trial Court, while considering the application under Order VII Rule 11(d), has correctly noticed that a pure claim for partition and determination of independent civil rights would not automatically be barred by Section 34. However, the Trial Court, in the considered opinion of this Court, has failed to examine the prayers and the pleadings at the required level of scrutiny.

112. The issue is not merely whether the plaintiffs have sought partition. The issue is what relief, in substance, is sought against the secured creditor.

113. On that aspect, the Trial Court has proceeded predominantly on the nomenclature of the suit and has not given due weight to prayers (c) and (d) and the corresponding pleadings in paragraphs 7, 10 and 13.

114. The present suit therefore falls within the first category referred to supra, namely, a suit in which the family members, while asserting an alleged share in the property, have directly questioned the mortgage and the consequent action of the secured creditor. It is not a case where the plaintiffs seek only partition and separate possession while leaving the Bank's security interest untouched. It is a case where the plaintiffs seek to have the mortgage declared illegal and void and seek to restrain the Bank from enforcing the security interest. Such a suit is barred under Section 34 of the SARFAESI Act.

115. In the circumstances, the statutory remedy available under Section 17 of the SARFAESI Act has to be treated as the appropriate remedy for any grievance which the plaintiffs may have against the measures taken by the secured creditor under Section 13(4). Accordingly, point nos. (i) and (ii) are answered in the '***negative'***, point nos. (iii) to (v) are answered in the '***affirmative'.***

116. This Court is not expressing any opinion on the merits of the plaintiffs' alleged share, the validity of the

relinquishment deed, the correctness of the mutation entry, the validity of the mortgage or the legality of the measures taken by the Bank. Those matters are to be considered by the competent forum in accordance with law. Since the bar under Section 34 is apparent from the plaint itself when the pleadings and reliefs are read conjointly, the plaint is liable to be rejected under Order VII Rule 11(d) of the CPC. The impugned order, therefore, cannot be sustained.

117. **<u>CONCLUSION:</u>**

(I) (a) Section 34 of the SARFAESI Act bars the Civil Court from entertaining a suit insofar as the substance of the dispute concerns a measure taken or proposed to be taken by the secured creditor under Section 13(4), since such grievance is within the jurisdiction of the DRT under Section 17. However, Section 34 does not constitute an omnibus bar against every civil dispute concerning a secured asset. Where a non-borrower coparcener or co-sharer asserts an independent pre-existing civil right and seeks determination of share, partition and separate possession, and the declaration concerning the mortgage is directed to the limited question whether the mortgage binds that independent share, the Court must examine whether such independent relief falls outside the statutory jurisdiction of the DRT. The mere pendency of SARFAESI proceedings does not, by itself, determine the question of Civil Court jurisdiction.

(b) Equally important is the converse principle:

Where the alleged partition suit is merely a device to challenge possession, auction, sale or other enforcement measures undertaken by the secured creditor, the Civil Court cannot entertain the suit merely because the plaintiffs have pleaded a claim of partition or described themselves as coparceners.

The Court must therefore examine the substance of the plaint and not merely its nomenclature. Having examined the rival submissions, the pleadings in the plaint and, in particular, the reliefs sought by the plaintiffs, this Court is of the considered view that the controversy in the present case has to be determined by looking at the substance of the suit and the real nature of the reliefs sought, rather than merely by the nomenclature given to the suit as one for partition and separate possession.

(II) In a concise summation, the plaintiffs cannot be permitted to convert a challenge to the mortgage and the consequential enforcement action of the secured creditor into a suit for partition merely by seeking a declaration of their alleged share. The prayers for declaration that the mortgage is illegal, null and void and for permanent injunction restraining the Bank from interfering with the property, when read with the specific averments in paragraphs 7, 10 and 13 of the plaint alleging that the Bank fraudulently created the mortgage and is attempting to take possession pursuant thereto, unmistakably demonstrate that the dominant and substantive relief is against the secured creditor and its enforcement of the security interest. The present suit is, therefore, not a partition suit simpliciter by non-alienating coparceners seeking only determination of their independent share; rather, the alleged claim of partition is being employed to challenge and nullify the mortgage and the measures undertaken by the secured creditor under the SARFAESI Act. Such a challenge falls within the jurisdiction of the DRT under Section 17 and is barred before the Civil Court by Section 34 of the SARFAESI Act. Accordingly, the plaint in O.S. No.44/2024 is liable to be rejected under Order VII Rule 11(d) CPC.

118. Accordingly, this Court proceeds to pass the following:

ORDER

(i) The Civil Revision Petition is ***allowed***.

(ii) The order dated 09.09.2025 passed in O.S. No.44/2024 by the learned Senior Civil Judge and Principal JMFC, Yellapur, sitting at Mundgod is set aside.

(iii) The application filed by the petitioner under Order VII Rule 11(d) read with Section 151 of the Code of Civil Procedure, 1908, and Section 34 of the SARFAESI Act, 2002, is allowed.

(iv) The plaint in O.S. No.44/2024 is rejected as being barred by Section 34 of the SARFAESI Act.

(v) It is made clear that this Court has not expressed any opinion on the merits of the plaintiffs' alleged share, the validity of the relinquishment deed or mutation entry, the validity of the mortgage, or the legality of the measures taken by the secured creditor under the SARFAESI Act. All such contentions are left open to be urged before the competent forum in accordance with law.

(vi) The Bank is at liberty to proceed with the measures initiated under the SARFAESI Act strictly in accordance with law.

Ordered accordingly.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

MBS
CT:BCK
LIST NO.: 1 SL NO.: 39