

Indian Bank vs K. Pappireddiyar on 20 July, 2018

Equivalent citations: AIR 2018 SUPREME COURT 3540, (2018) 5 ANDHLD 128, (2018) 189 ALLINDCAS 53 (SC), (2018) 130 ALL LR 709, (2018) 189 ALLINDCAS 53, (2018) 2 NIJ 291, (2018) 2 ORISSA LR 367, (2018) 3 CURCC 348, (2018) 3 JLJR 348, (2018) 3 RECCIVR 875, (2018) 4 CAL HN 89, (2018) 4 ICC 20, 2018 (4) KCCR SN 459 (SC), (2018) 4 PAT LJR 12, (2018) 5 ALL WC 4852, (2018) 9 SCALE 243, 2018 ACD 996 (SC), (2019) 142 REVDEC 160, (2019) 1 CIVLJ 463, (2019) 1 MAD LW 90, (2019) 1 WLC(SC)CVL 440, AIR 2018 SC (CIV) 3065

Author: D Y Chandrachud

Bench: D Y Chandrachud, A M Khanwilkar, Dipak Misra

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 6641 OF 2018
(Arising out of Special Leave Petition (C) No. 29268 OF 2016)

INDIAN BANK & ANR

.... App

VERSUS

K PAPPIREDDIYAR & ANR

.... RES

With

CIVIL APPEAL No. 6645 OF 2018
(Arising out of Special Leave Petition (C) (D No. 15774 OF 2017))

JUDGMENT

Dr D Y CHANDRACHUD, J Date: 2018.07.20 The Division Bench of the High Court of Judicature at Madras has held that the 16:23:43 IST Reason:

proceedings initiated by the appellant under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (the SARFAESI Act) are a nullity. The basis of this conclusion is that the Act does not apply to agricultural land. In consequence, the High Court has held that a security interest in agricultural land cannot be enforced.

2 In 1989, a term loan was granted by the appellant to Yelagiri Dairy Farm for setting up a dairy farm on a property ad-measuring 6.10 acres and bearing survey No. 203/2, 3, 4, 5 & 202/1A situated at Peddakallupalli Village, NH Road, Vaniambadi, Tamil Nadu. By a registered power of attorney, the first respondent appointed N K Arumugham as his attorney and authorised him to sell or mortgage the property. Arumugham was the managing partner of the partnership farm and had mortgaged the property in favour of the appellant. The first respondent was a guarantor. In 1993, building was constructed and machines were installed by the borrowers to commence business. The account became a non-performing asset. In 1995, the Bank filed a suit for recovery. It was transferred to the Debt Recovery Tribunal (DRT-III) at Chennai and renumbered as T.A. No. 93 of 2007. On 11 June 2010, DRT-III allowed the claim of the Bank in the amount of Rs. 31,00,238/- with interest at 9 per cent per annum. A recovery certificate was issued on 10 February 2011 in the amount of Rs. 74,31,233.14/-. On 2 August 2011, the Bank issued a demand notice under Section 13(2) for Rs. 85,41,662/-. Overruling an objection that the property is agricultural in nature, it took possession on 31 October 2011. The Bank issued a sale notice on 2 April 2012. The sale notice was challenged in Original Suit No. 74 of 2012, which was dismissed in default. The second respondent was the successful bidder at an auction sale held on 12 May 2012. He paid a consideration of Rs. 1.27 crores. The sale certificate was issued on 14 June 2012 and was rectified on 7 September 2012. 3 The sale certificate was challenged in writ proceedings before the Madras High Court. The petition was dismissed on 4 April 2013 with liberty to the first respondent to adopt appropriate steps. The first respondent thereupon moved DRT-III at Chennai for challenging the sale certificate. The proceeding was dismissed on 17 May 2013. On 11 September 2014, an appeal filed by the first respondent was allowed by the DRAT on the ground that the property which was sold, was agricultural and was exempt from the provisions of the Act. Both the Bank and the auction purchaser filed petitions before the High Court at Madras under Article 226. The High Court dismissed the petitions. It held that since a security interest had been created in agricultural land, the provisions of the SARFAESI Act were not attracted.

4 Aggrieved by the judgment and order of the Madras High Court, the Bank and the auction purchaser instituted proceedings before this Court under Article 136 of the Constitution. Leave has been granted.

5 In support of the appeal, it has been urged on behalf of the appellant that the property which was the subject matter of the mortgage comprised of dry land and was not exempt from the provisions of the SARFAESI Act. It has been urged that it is a settled position that the mere classification of a property in the revenue records as agricultural does not render it agricultural land. Whether a

particular parcel of land is agricultural is a question of fact. In the present case, it has been submitted that no agricultural activity was taking place on the date of the creation of the mortgage and it was classified as dry land in the land acquisition proceedings. The auction purchaser has while supporting the submissions of the Bank urged that plots have been carved out of the land and sold.

6 On the other hand, reliance was placed by learned Counsel appearing on behalf of the first respondent on a recent judgment of this Court in *ITC Limited v Blue Coast Hotels Limited*¹, in support of the submission, that no security interest could be created in respect of agricultural land, having due regard to the provisions of Section 31(i). Learned Counsel adverted to the findings which were recorded in the judgment of the DRAT.

7 Section 31(i) of the SARFAESI Act stipulates thus :

“31. Provisions of this Act not to apply in certain cases.- The provisions of this Act shall not apply to...

(i) any security interest created in agricultural land;” 1(2018) SCC OnLine SC 237 The expression ‘security interest’ was defined, prior to its amendment, in Section 2(zf) as follows :

“2(zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31;” Clause (zf) was substituted with effect from 1 September 2016 by Act 44 of 2016. At present, the expression is defined as follows :

“(zf) "security interest" means right, title or interest of any kind, other than those specified in section 31, upon property created in favour of any secured creditor and includes—

(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or

(ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset;’.”

8 The expression ‘security interest’, both before and after the amendment, excludes what is specified in Section 31. Clause (i) of Section 31 stipulates that the provisions of the Act will not be applicable to any security interest created in agricultural land. The statutory dictionary in Section 2 does not contain a definition of the expression “agricultural land”. Whether a particular piece of land is agricultural in nature is a question of fact. In the decision of this Court in *Blue Coast Hotels Limited* (supra), a security interest was created in respect of several parcels of land which were meant to be a part of a single unit, for establishing a hotel in Goa. Some of the parcels were purchased by the debtor from agriculturists and were entered as agricultural lands in the revenue records. The debtor had applied to the revenue authority for the conversion of the land to non-agricultural use, but the applications were pending. This Court held that the fact that the debtor had created a security interest was indicative of the position that the parties did not treat the land as agricultural land. The undisputed position was that the hotel was located on 1,82,225 square meters of land of which 2,335 square metres were used for growing vegetables and fruits for captive consumption. In this background, the two-judge Bench of this Court held that :

“49. The mortgage is thus intended to cover the entire property of the Goa Hotel. Prima facie, apart from the fact that the parties themselves understood that the lands in question are not agricultural, it also appears that having regard to the use to which they are put and the purpose of such use, they are indeed not agricultural.” The Court further held that:

“57...having regard to the character of the land and the purpose for which it is set apart, we are of the view that the land in question is not an agricultural land. The High Court mis- directed itself in holding that the land was an agricultural land merely because it stood as such in the revenue entries, even though the application made for such conversion lies pending till date.”

9 The classification of land in the revenue records as agricultural is not dispositive or conclusive of the question whether the SARFAESI Act does or does not apply. Whether a parcel of land is agricultural must be deduced as a matter of fact from the nature of the land, the use to which it was being put on the date of the creation of the security interest and the purpose for which it was set apart. 10 The Division Bench of the Madras High Court has failed to adjudicate on the basic issue as to whether the land in respect of which the security interest was created, was agricultural in nature. The DRT rejected the objection of the debtor that the land was agricultural. In appeal, the DRAT reversed that finding. Apart from referring to the position in law, the impugned judgment of the High Court contains no discussion of the material which was relied upon by the parties in support of their respective cases; the Bank urging that the land was not agricultural while the debtor urged that it was. Both having regard to the two-judge Bench decision in *Blue Coast Hotels Limited* and as explained above, the question as to whether the land is agricultural has to be determined on the basis of the totality of facts and circumstances including the nature and character of the land, the use to which it was put and the purpose and intent of the parties on the date on which the security interest was created. In the absence of a specific finding, we are of the view that it would be appropriate and proper to set aside the judgment of the High Court and to remit the proceedings for being considered afresh.

11 We accordingly allow the appeals and set aside the impugned judgment and order of the High Court dated 5 April 2016. The writ petition filed by the auction purchaser (writ petition No. 26633 of 2014) and the writ petition filed by the Bank (writ petition No. 32208 of 2014) are restored to the High Court. We request the High Court to endeavour an expeditious disposal.

12 In the circumstances of the case, there shall be no order as to costs.

.....CJI [DIPAK MISRA]J [A M
KHANWILKAR]J [Dr D Y CHANDRACHUD] New Delhi;

July 20, 2018.