

CS 285/25

**SHAKUNTLA DEVI ALIAS SHAKUNTALA VS.
SARVOTTAM PANCHAL & ORS.**

12.11.2025

Present: Plaintiff with Ld. Counsel Dr. Gaurav Manuja through V.C.

Put up for orders at 3:00 PM.

Aashish Gupta
DJ-01/NE/KKD/DELHI
12.11.2025

At 3:00 PM

Present: None.

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ORDER

1. Summons in the matter are yet to be issued. At the admission stage, a query was put to the Counsel for plaintiff to explain the reasons for suing D-3 to D-6 in this suit. The reason for raising the said query shall be evident shortly.
2. Plaintiff claims to be the absolute owner of a property bearing No. D-60, 30 feet Road, Street No. 3, Ganga Vihar, Delhi – 110094 **measuring 90 sq yards with old plot No. 22, Block No. F, Out of Khasra No. 100 and 201 at Village Gokalpur, Ganga Vihar, Shahdara, Delhi.**

3. It is her case that she is owner of the aforesaid property since 1984 and is in physical possession thereof ever since.
4. She claims that she inducted D-1's father Laxmichand Panchal as a licensee on his request as said Laxmichand Panchal was her neighbour and she had good relations with him. The reason for the said induction was pending construction of Mr. Panchal's house nearby.
5. The period of license is stated to be from April 2018 till December 2018.
6. Mr. Panchal is stated to have vacated the property in December 2018.
7. Eventually, as per plaintiff, in April, 2025, her husband received a call intimating them about a loan taken by D-1 and D-2.
8. D-1 and D-2 are stated to be son and daughter-in-law of Laxmichand Panchal.
9. As per plaintiff, she learnt that purportedly, D-5 had executed a registered sale deed dated 30.07.2018 in favour of D-2 qua property No. D-60, **measuring 100 sq yards falling in Khasra No. 232/1**, Gali No. 3, Ganga Vihar, Shahdara, Delhi-110094.
10. As per plaintiff's case (as pleaded in para 27 of the plaint), even though the property number mentioned in the sale deed is same as that of the plaintiff's property, the other descriptions i.e. (a) area of property; (b) the khasa number; and (c) the size of the road

where the property is located are different from that of the plaintiff's property.

11. Plaintiff claims that the aforesaid differences would mean that her property is different and distinct from the property covered in the aforesaid sale deed.
12. It is her case that she is the owner of the property and thus, D-5 could have never executed any sale deed in favour of D-2; and D-2 and D-1 could have never taken any loan against her property.
13. It is her case that initially D-3 gave a loan on the basis of the aforesaid sale deed to D-1 and D-2 and eventually the said loan was transferred to D-4.
14. She apprehends that D-3 would use her property to recover the loan amount payable to D-3/D-4 and may put her property to auction (see para 42 and 44 of the plaint).
15. Thus, she has approached this Court seeking various reliefs including a declaration of ownership.
16. Now, her relief (c), (d), (f) and (g) are relevant for deciding the issue in hand and the same read as under:-

“c) Pass a decree of permanent injunction in favour of plaintiff and against the defendant no 3 by restraining the defendant no 3 to affix the demand and possession notices on the wall of the suit property.

d) Pass a decree of permanent injunction in favour of plaintiff and against the defendant no 3 by restraining the defendant no 3 stop demanding the loan amount of Rs 56,10,000/ as it was never approved on the name and property of the plaintiff and also stop auctioning process of the suit property without the permission of the plaintiff.

f) Pass a decree of Permanent Injunction in favour of plaintiff against the defendant no 5 for restraining the defendant no 5 for making further forged and fabricated deed of the suit property.

g) Pass a decree of Permanent Injunction against the defendant no 6 fo restraining the defendant no 6 for registering any document c the suit property.”

17.A perusal of the aforesaid reliefs show that at least relief (c), (d) and (g) are sought qua D-3/D-4 and D-5.

18.As per memo of parties, D-3 and D-4 are financial institutions who have given some loan against a property. D-6 is Sub-Registrar concerned.

19.Since, D-3 and D-4 are financial institutions and possibly secured creditors, a query was raised by this Court from the plaintiff to explain how they can be sued in view of Section 34 & 35 of Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as '**SARFAESI Act**').

20.Again, qua D-6, it is to be noted that a Sub-Registrar is a statutory authority who, in law, is obligated to register any document presented, if the same is found in order as per rules. Thus, essentially, there is no disclosure of cause of action against D-6 and it was in these circumstances that a query was raised qua D-6.

21. Counsel for plaintiff claimed that since the property of the plaintiff is distinct and separate from the property mortgaged with D-3/D-4, it has to be taken that there was connivance between defendants and therefore, as per plaintiff, all the defendants were necessary parties to this suit.

22. It is pertinent to note that before filing of this suit, plaintiff has admittedly approached the concerned DRT by way of securitization application No. 193/2025 under relevant provisions of SARFAESI Act.

23. Plaintiff has herself placed on record a copy of the order passed in the said application dated 13.06.2025 as annexure-R. As per the said order, the contention taken before this Court was also taken by the plaintiff before the concerned DRT and in its order dated 13.06.2025, the said contention was left open by the DRT to be decided **at the time of final hearing** and a specific direction was passed by the concerned DRT that the financial institution/court receiver **will only take possession of the mortgaged property**.

24. Thus, not only did the plaintiff approach the DRT with her plea that her property is different and distinct from the mortgaged property, it was even taken note of by the concerned DRT and this plea is still to be adjudicated by DRT.

25. Section 34 of the SARFAESI Act reads as under:

Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this

Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)

26. The scope of said section is no longer res integra and in this regard, I may place reliance on the ratio of **Jagdish Singh vs Heera Lal & ors** wherein it was held:

“22. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of the Section 13 envisages various measures to secure the borrower’s debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the “measures” referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under section 17. The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceedings “in respect of any matter” which a DRT or an Appellate Tribunal is empowered or under the Securitization Act to determine. The expression in respect of any matter referred to in Section 34 would take in the ‘measures’ provided under sub-section (4) of Section 13 of the Securitization Act. Consequently if any aggrieved person has got any grievance against any ‘measures’ taken by the borrower under sub-section 4 of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the Civil Court. Civil Court in such circumstances has no jurisdiction of the DRT and the Appellate Tribunal. Further Section 35 says, the Securitization Act overrides other laws, if they are inconsistent with the provision of that Act, which take in Section 9 CPC as well.

23. We are of the view of that Civil Court jurisdiction is completely barred, so far as the ‘measure’ taken by a secured creditor under sub-section (4) of Section 13 of the Securitization Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal to determine as to whether there has been any illegality in the ‘measures’ taken. The bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of respondent

no. 6 to 8 have been crystalized, before creating security interest in respect of the secured assets. In such circumstances, we are of the view that the High Court was in error in holding that only civil court jurisdiction to examine as to whether the 'measure' taken by the secured creditor under sub-section (4) of Section 13 of the Securitization Act were legal or not. In such circumstances, the appeal is allowed and the judgment of the High Court is set aside. There shall no order as to costs.

(Emphasis supplied)

27. A bare perusal of the aforesaid ratio would show that **any person aggrieved by any of the measures referred to in section 13 (4) of SARFAESI Act taken by secured creditor can approach DRT for redressal of his grievance**. As per the said judgment, this right is given not only to a borrower, but to any person who is aggrieved by an action of a secured creditor. Admittedly, plaintiff considers herself to be an aggrieved person covered u/s 17(1) of the SARFAESI Act as she herself has pleaded the factum of she approaching the DRT in her plaint.

28. Thus, as far as her prayer (c) and (d) (seeking to restrain D-3/a financial institution from affixing any demand notices or from demanding any loan amount or from auctioning the property of the plaintiff without her permission) are concerned, they shall fall within the jurisdiction of the concerned DRT. The said prayers are cleverly drafted and they essentially touch upon the fact as to whether D-3/D-4 have plaintiff's property as security covering the loan in question. The concerned DRT shall have to decide the said question and it is already seized of the said issue.

29. If that be the case, the suit of the plaintiff qua D-3 and D-4 is barred by law in light of Section 34 of SARFAESI Act.
30. Further still, as per the plaintiff's own pleadings, D-3/D-4 cannot claim any right, title or interest in the suit property by virtue of alleged sale deed dated 30.07.2018 (executed by D-5 in favour of D-2) because her property is different from the one described in the said sale deed and therefore, none of the defendants have any right, title or interest in the suit property.
31. Now, if the plaintiff herself alleges that the property in question is different from the one covered under the sale deed, her case in sum and substance is that no security interest was actually created in favour of D-3/D-4 qua the suit property by sale deed dated 30.07.2018.
32. A bare perusal of the plaint shows that plaintiff is aggrieved by the action of D-3/D-4 taken under the SARFAESI Act by treating the suit property as a secured asset and thereafter putting it to auction under Section 13 (4) of SARFAESI Act. Section 17 of the said Act specifically empowers DRT to go into the legality of the said acts of the bank/financial institution. It means that whether the acts of the concerned bank/ financial institution of treating the suit property as a security interest/secured asset is a question, which can and should, be gone into by the concerned DRT. Under section 17 of SARFAESI Act, DRT is empowered to examine all the facts and circumstances of a case and can also take evidence produced by the parties to come to a conclusion that

any of the measures taken by the secured creditor U/S 13 (4) is or is not in accordance with the provisions of the said Act.

33. This shall mean that DRT can consider as to whether any security interest could or could not be created in favour of D-3/D-4 by virtue of sale deed dated 30.07.2018.

34. Now, if the said question can be adjudicated by DRT concerned, then it can pass appropriate orders including restoration of possession of the suit property as per law. If the concerned DRT comes to a conclusion that no interest could have been created by virtue of said sale deed dated 30.07.2018, then the entire basis of creation of security interest; eventual possession of the secured asset; and its sale shall have to be set aside by the concerned DRT and the concerned DRT shall be within its right to pass any such order which it deems necessary, as per law.

35. Now, if such an order is passed in favour of the plaintiff and against the secured asset/suit property, no grievance of the plaintiff shall survive qua D-3 and D-4 which may require adjudication.

36. In other words, in my humble opinion, the entire case of the plaintiff aimed at D-3 and D-4 is with respect to the legality of their actions based on sale deed dated 30.07.2018. Since the said actions are to be tested before the concerned DRT, the suit of the plaintiff qua D-3 and D-4 is barred in law.

37. Again, as far as D-6 is concerned, it is a statutory authority who is obligated in law to register any document presented to it as per rules. Thus, no injunction can be granted against the said authority restricting it to not to register any document including the one pertaining to suit property. No cause is laid in the plaint to justify the said claim of plaintiff as detailed in prayer (g).
38. Thus, in my humble opinion, the suit qua D-3 and D-4/financial institutions is barred in law. The suit qua D-6 is bad for non-disclosure for cause of action.
39. Now it can be argued that a plaint cannot be rejected in part and therefore, the present suit must go on. There is no dispute qua the settled position of law that a plaint cannot be rejected in part qua a given party. It means that if some of the reliefs sought by the plaintiff against a given defendant are barred by law and some are permissible, such a plaint cannot be rejected in part U/O VII Rule 11 CPC qua the said party.
40. Presuming, for the sake of arguments, that the plaint cannot be rejected in part i.e. even for defendant No. 3, 4 and 6, still, they shall be required to be deleted from the array of parties for the reasons recorded above. Thus, even if, due to procedural technicality, the plaint is not rejected qua said defendants, still, this Court shall be obligated to delete them from the array of parties.

41. But, in my humble opinion, there is nothing in Order VII Rule 11 CPC which prevents rejection of the complete plaint qua one of the defendants/parties in the suit. In this regard, I may place reliance on the judgment of **“Phool Sundari Vs. Gurbans Singh & Ors. AIR 1957 RAJ 97”** wherein the Hon’ble Rajasthan High Court has specifically held that a plaint can always be rejected qua a particular defendant while it survives for others. Similarly, the Hon’ble Supreme Court of India in the matter of **“Church of Christ Charitable Trust and Education Vs. M/s Ponniamman Educational Trust in Civil Appeal No. 4841 of 2012”** has also allowed rejection of plaint qua one of the defendants only. Similarly, the division bench of Hon’ble High Court of Bombay speaking through Hon’ble Justice D.Y. Chandrachud (as his lordship was then) allowed rejection of plaint qua one of the defendants in the matter of **“K.S. Dhondy Vs. Her Majesty the Queen of Netherlands and Anr. In Appeal No. 493 of 2012”**.

42. Thus, in my humble opinion, the present plaint qua **defendant No. 3 and defendant No. 4** is liable to be rejected U/O VII Rule 11(d). It is liable to be rejected qua **defendant No. 6** U/O VII Rule 11(a) CPC. It is ordered accordingly.

43. Let decree sheet be prepared accordingly.

44. This would mean that **prayer (c), (d) and (g) shall be treated to have been deleted from the plaint.**

45. Let summons be issued to D-1 and D-5 only. Since D-2 is stated to have already expired and is being sued through D-1, no separate summons are required to be sent to D-2. Let summons be sent through all permissible modes including dasti service, returnable for 08.01.2026. Let PF be filed.

Aashish Gupta
District Judge-01,
North-East District,
Karkardooma Courts, Delhi
12.11.2025.

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