



SARFAESI

# Mortgage Validity Under Scrutiny: DRAT Chennai Dismisses ICICI Bank's SARFAESI Appeal Over Defective Title Deed Mortgage

The Debt Recovery Appellate Tribunal at Chennai, in its judgment dated 27 April 2026, delivered a significant ruling on the evidentiary burden required to establish a valid mortgage by deposit of title deeds under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The case was presided over by Justice [...]

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The Debt Recovery Appellate Tribunal at Chennai, in its judgment dated 27 April 2026, delivered a significant ruling on the evidentiary burden required to establish a valid mortgage by deposit of title deeds under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The case was presided over by Justice G. Chandrasekharan, Chairperson of the Tribunal. The appellant was the Authorised Officer of ICICI Bank Ltd., while the respondents comprised A. Chittibabu and another as Respondents 1 and 2, M/s. Jakshan Rubbers as the borrower Respondent 3, guarantors including D. Palani Chettiar as Respondent 5 and mortgagor-cum-guarantor, and the legal representative of a deceased guarantor. The appeal arose from a protracted dispute concerning the validity of a mortgage created over immovable property measuring 51,836 square feet, and the consequent entitlement of the Bank to take possession and enforce security under the SARFAESI Act.

The factual matrix of the case traces back to 6 April 2006, when the borrower M/s. Jakshan Rubbers approached ICICI Bank for an overdraft facility of Rs. 1.45 crores. For securing this facility, Respondent 5, D. Palani Chettiar, stood as both guarantor and mortgagor, while his mother Mrs. Kupammal allegedly joined in creating a mortgage over the disputed property by depositing original title deeds and executing a declaration on the same date. An affidavit purportedly confirming this guarantee and collateral security was filed by Mrs. Kupammal on 29 May 2006. The property in question had originally been purchased in 1955 in the name of Mrs. Kupammal by her husband Dharmalinga Chettiar, and following a family partition in 1985, the property was allotted to her. Upon default by the borrower, the Bank classified the account as a non-performing asset and issued a demand notice under Section 13(2) of the SARFAESI Act on 26 October 2009. Symbolic possession was subsequently taken through a Possession Notice dated 16 February 2012 under Section 13(4) of the said Act.

The immediate trigger for litigation was the filing of Securitisation Application No. 161 of 2012 before the Debt Recovery Tribunal-III at Chennai by Respondents 1 and 2, who claimed to be third-party purchasers of an extent of 38,659.5 square feet from the legal representatives of Mrs. Kupammal. They relied upon four sale deeds: two dated 13 May 1999 and 24 February 2005, covering 11,713 square feet and 12,655 square feet respectively, and two both dated 7 May 2009, covering 7,546.5 square feet and 6,745 square feet respectively. The DRT-III allowed the application in respect of the entire 38,659.5 square feet, set aside the Possession Notice dated 16 February 2012, and ordered restoration of possession to the applicants, holding that the mortgagor had neither title nor possession over that extent at the time of the mortgage.

Aggrieved by the DRT order, the Bank preferred the present appeal before the DRAT. By an order dated 6 July 2023, the predecessor Bench of the DRAT examined the chronological sequence of the sale deeds and the mortgage. It found that the two sale deeds dated 13 May 1999 and 24 February 2005, covering a total of 24,368 square feet, had been executed prior to the mortgage dated 6 April 2006. Consequently, the Bank could not proceed against that extent. However, the two sale deeds dated 7 May 2009, covering 14,291.5 square feet, were subsequent to the mortgage. The DRAT confirmed the setting aside of the Possession Notice but granted liberty to the Bank to initiate fresh measures under Section 13(4) of the SARFAESI Act in respect of 27,468 square feet, being the balance of 51,836 square feet minus 24,368 square feet.

Dissatisfied with this partial relief, Respondents 1 and 2 filed Civil Revision Petition No. 3845 of 2024 before the Hon'ble High Court of Madras. The High Court observed that the DRAT had failed to answer the fundamental objection raised by the respondents that no valid mortgage existed at all, a contention which the DRT had accepted in its original order. The High Court noted that the DRT had given a positive finding that the mortgagor had no title or possession in respect of 38,659.5 square feet, which had already been assigned to the petitioners. In these circumstances, the High Court set aside the DRAT order dated 6 July 2023 and remanded the matter to the Tribunal for de novo consideration, limited to the extent of 14,291.5 square feet, to determine whether a valid mortgage existed in favour of the Bank over that specific portion.

On remand, the DRAT was confronted with the sole question of whether a valid mortgage was created in favour of the Bank in respect of 14,291.5 square feet, given the DRT's finding that the Bank had no valid right or interest over the 38,659.5 square feet already sold to the respondents. The Bank's counsel, Mr. S. Suresh appearing for M/s. T. Srinivasaraghavan and Associates, reiterated that the deposit of original title documents and the affidavit of Mrs. Kupammal were sufficient to establish a valid mortgage by deposit of title deeds. It was emphasised that while the 1999 and 2005 sale deeds were prior to the mortgage, the 2009 sale deeds were subsequent thereto, and the properties sold under those deeds remained subject to the mortgage in the Bank's favour. The DRT was faulted for having set aside the Possession Notice for the entire 38,659.5 square feet without appreciating this distinction.

In reply, learned counsel for Respondents 1 and 2, Mr. B. Thilak Narayanan appearing for Mr. K. Srinivasan, mounted a frontal attack on the very existence of the mortgage. It was submitted that Mrs. Kupammal possessed only a life interest in the property

and therefore lacked the capacity to execute a mortgage. More fundamentally, serious discrepancies were highlighted in the alleged mortgage documents. Mrs. Kupammal, who habitually signed documents in Tamil as evidenced by her own sale deeds, had purportedly affixed only a thumb impression in the mortgage document, with no attribution as to whose thumb impression it was. A critical inconsistency was pointed out regarding her husband's name: the guarantee document showed her husband as Sundaram Chettiyar, whereas all other documents including the sale deed dated 24 February 2005 and the affidavit dated 29 May 2006 named him as Dharmalinga Chettiar. Additionally, her age was stated as 62 years in the guarantee document but as 88 years in the sale deed dated 24 February 2005. It was contended that these discrepancies rendered the mortgage documents highly suspicious, and the Bank had failed to examine the person who allegedly witnessed the affixture of the thumb impression to dispel the doubts.

The Tribunal, after considering the rival submissions and perusing the record, first noted the admitted position that 24,368 square feet had been sold through the two pre-mortgage sale deeds, thereby falsifying the Bank's claim that the mortgage covered the entire 51,836 square feet. Turning to the remand question, the Tribunal scrutinised the declaration dated 6 April 2006 and the guarantee document. It found that while the declaration bore the signature of D. Palani Chettiar and a thumb impression, and the guarantee document bore another thumb impression, there was no specific mention anywhere identifying the thumb impression as belonging to Mrs. Kupammal. The Tribunal took serious note of the discrepancies in the husband's name and the age of Mrs. Kupammal across documents, which the Bank failed to explain despite being afforded sufficient opportunity. Crucially, the Bank did not examine the person who allegedly witnessed the affixture of the thumb impression to clear the surrounding doubts. The Tribunal concluded that the Bank had miserably failed to prove that Mrs. Kupammal had stood as a guarantor, executed a mortgage, or deposited title deeds with the intention to create a valid mortgage.

In the result, the DRAT dismissed Appeal RA (SA): 46/2013. Both parties were directed to bear their own costs, and all pending interlocutory applications were disposed of. The judgment has the effect of permanently barring the Bank from proceeding under the SARFAESI Act against the 14,291.5 square feet covered by the post-mortgage sale deeds, as the foundational mortgage itself was found to be invalid and unproved.

The decision in *Authorised Officer, ICICI Bank Ltd. v. A. Chittibabu and Others* serve as a salutary reminder to secured creditors that the creation of a mortgage, particularly one by deposit of title deeds, must be supported by unimpeachable documentary evidence and consistent attestation. The Tribunal's insistence on proper identification of executants, consistency in personal details across documents, and the examination of attesting witnesses highlights the rigorous evidentiary standards that financial institutions must meet before invoking the coercive remedies available under the SARFAESI Act. For legal practitioners advising banks and financial institutions, this judgment highlights the critical importance of due diligence at the stage of mortgage creation, as defects that surface years later can defeat enforcement proceedings entirely. The ruling also reinforces the protective jurisdiction of the DRT and DRAT in scrutinising the validity of security interests claimed by creditors, ensuring that third-party purchasers are not arbitrarily dispossessed through defective enforcement actions.

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