

IN THE HIGH COURT OF JUDICATURE AT PATNA

Jay Shankar

vs.

Anurag Kumar & Ors

CIVIL MISCELLANEOUS JURISDICTION No.635 of 2023

13 August, 2024

(Hon'ble Mr. Justice Arun Kumar Jha)

Issue for Consideration

Issue arose regarding the legal standing and rights of the petitioner concerning property disputes involving multiple parties, including guardians and family members, and the implications of the involvement of a financial institution in such disputes.

Headnotes

The present petition has been filed under Article 227 of the Constitution of India for the following reliefs : “(i) For a direction to dispose of the application filed by the petitioner on 04.11.2022 in the court of Sub Judge 1st, Danapur under order 1 Rule 10(2) and section 151 of C.P.C. for impleading as necessary party (intervener defendant) in Title Partition Suit No.87/2018 being a purchaser of an area of 12342 sq.ft. i.e. 28.22 dec. land of Survey Plot No.1380, Khata No.367 of Mauza Danapur Sahjadpur, Panchuchak, Sultanpur Gola Road, P.S.- Danapur, District-Patna purchased through certificate of sale dated 20/03/2021 issued by

the Authorized Officer, Canara Bank SPL SME, Branch, Patna and subsequently through registered sale deed dated 14/02/2022 after succeeding in a open auction bid dated 28/07/2020 published in Daily Hindustan Newspaper by Canara Bank SPL SME, Branch, Patna under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 within a time frame and further to allow the petitioner as necessary party in the aforesaid Title Partition Suit. – Further For a direction to the learned lower court to decide the issue raised by the petitioner in his application regarding plot having an area 12342 sq.ft. i.e. 28.33 dec. land of Survey Plot No.1380, Khata No.367 of Mauza Danapur Sahjadpur, Panchuchak, Sultanpur Gola Road, P.S.-Danapur, District Patna purchased through sale deed dated 14/02/2022 under auction bid of SARFAESI Act and exclude the area of aforesaid plot from proceeding of Title Partition Suit No. 87/2018 pending in the court of Sub Judge 1st, Danapur in view of provision of section 34 of the SARFAESI Act, 2002 – Also For setting aside the order of injunction dated 25/05/2022 passed in Title Partition Suit No. 87/2018 behind back of petitioner more particularly to the extent

of purchased land of petitioner. Furtherly prayed through I. A NO. 02 of 2024 - For rejection of plaint to the extent of land purchased by the petitioner i.e. an area of 12342 sq.ft. (28.33 dec.) out of the total Suit land of afore said Title partition suit. So far as the petition dated 04.11.2022 filed by the petitioner under Order 1 Rule 10 of the Code has already been allowed vide order dated 30.06.2023 by the learned trial court, obviously the said relief has become infructuous , hence no order required to pass with regard to relief no. 1 (i). So far as availability of alternative remedy with regard to relief no.1 (iii) is concerned, ordinarily this Court would not like to entertain such petition where specific provision under the Code has been made providing for appeal against such order. With regard to the relief sought for rejection of plaint or to the exclusion of the land purchased by the petitioner from the suit property is concerned, the petitioner is already before the learned trial court and has sought direction from this Court to the learned trial court to decide this issue. So far as contention of the petitioner about the order of injunction dated 25.05.2022 is concerned, it is the settled law that order of injunction would affect only the parties to the order. Since the

petitioner was not party when the order for injunction was passed, the petitioner would remain unaffected by the injunction order. However, as the petitioner has now been impleaded as a party, he is within his rights to move appropriate application and make prayer to the learned trial court to modify the order of injunction in consideration of entirety of facts. The petitioner has already raised certain points about inclusion of his purchased property as the subject matter of suit land though Section 34 of the SARFAESI Act completely bars jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter for which a Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal is empowered. Therefore, the claim of the petitioner that the learned Sub Judge has no jurisdiction to entertain the suit related to the land of the petitioner purchased under SARFAESI Act, the petitioner is at liberty to raise all issues before the learned Sub Judge 1st, Danapur for recall/modification of the order of Injunction - If need so arises, the learned trial court is directed to take into consideration the facts and circumstances of the case and pass appropriate orders within a month of petitioner moving an appropriate application in this regard. With the

aforesaid observations/directions, the instant petition stands disposed of. Consequently, I.A.No.01 of 2023 also stands disposed of.

Case Law Cited

<i>S.P. Chengalvaraya Naidu v. Jagannath</i> AIR 1994 SC 853: (1994) 1 SCC 1; <i>A.V. Papaya Sastry & Ors. vs. Government of A.P. & Ors.</i> 2007 (2) PLJR(SC) 201; <i>Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Ors. vs. Tuticorin Educational Society and Ors.</i> (2019) 9 SCC 538; <i>Mohamed Ali vs. V. Jaya & Ors.</i> 2022 (4) PLJR (SC) 127; <i>Mineral Development Ltd. vs. State of Bihar</i> AIR 1962 Patna 443; <i>Ram Prasad Singh vs. Subodh Prasad Singh and Ors.</i> AIR 1983 Patna 278; <i>Olinda Fernandes vs. Goa State Cooperative Bank Limited and Ors.</i> (2016) 13 SCC 298; <i>Jagdish Singh vs. Heeralal and Ors.</i> AIR 2014 SC 371; <i>Hirday Narain vs. Income Tax Officer</i> AIR 1971 SC 33;

List of Acts

Constitution of India, Article 227 - Relating to the supervisory jurisdiction of High Courts; Relevant provisions of the Transfer of Property Act, 1882 Governing property disputes; Securitisation and Reconstruction of Financial Assets and

Enforcement Of Security Interest (SARFAESI) Act , 2002 .

List of Keywords

Jurisdiction; Property Dispute; Financial Institution; Guardian;
Due Process; Civil Nature; Representation

Case Arising From

This case arises from a dispute involving multiple parties concerning property rights and the role of a financial institution in enforcing those rights, as well as the legal representation of the involved guardians.

Appearances for Parties

For the Petitioner/s: Mr. K.N. Chaubey, Sr. Advocate;
Mr. Awadhesh Kumar Pandit, Advocate

For the Respondents 1 to 5: Mr. J.S. Arora, Sr. Advocate; Mr. Gaurav Pratap, Advocate; Mr. Himanshu Shekhar, Advocate; Mr. Manoj Kumar, Advocate

For the respondent no. 7: Mr. Ray Saurabh Nath, Advocate; Mr. Rajesh Sinha, Advocate

For the Bank: Mr. Siddharth Harsh, Advocate

Headnotes Prepared by Reporter: Sharang Dhar Upadhyay,
Retired Judicial Officer

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.635 of 2023

Jay Shankar, Son of Jawahar Rai, House No. 64 Samasthu Sthan, Bihta, P.O. and P.S.- Bihta, District- Patna.

... .. Petitioner/s

Versus

- 1. Anurag Kumar, Son of Sri Baban Kumar, Guardian Name- Sri Baban Kumar, Resident of Sultanpur, P.O. Danapur Cant, P.S. Danapur, District- Patna.
- 2. Gyan, Son of Sri Baban Kumar, Guardian Name- Sri Baban Kumar, Resident of Sultanpur, P.O. Danapur Cant, P.S. Danapur, District- Patna.
- 3. Susri Kangana Kuswaha, Daughter of Sri Baban Kumar, Guardian Name- Sri Baban Kumar, Resident of Sultanpur, P.O. Danapur Cant, P.S. Danapur, District- Patna.
- 4. Susri Narayani Kumari, Daughter of Sri Baban Kumar, Guardian Name- Sri Baban Kumar, Resident of Sultanpur, P.O. Danapur Cant, P.S. Danapur, District- Patna.
- 5. Mamta Devi, Wife of Sri Baban Kumar Resident of Sultanpur, P.O. Danapur Cant, P.S. Danapur, District- Patna.
- 6. Sri Baban Kumar, Son of Late Nandkishore Prasad Resident of Sultanpur, P.O. Danapur Cant, P.S. Danapur, District- Patna.
- 7. Sri Ashok Kumar Sinha, Managing Director, Kutir Housing Developers and Consultant Pvt. Ltd., Registered officer 13/1, Anandpuri, P.S. Srikrishnapuri, District- Patna.
- 8. Lalita Devi D/o Late Nand Kishore Mahto and Sujata Devi Resident of Danapur Sultanpur, P.S.- Danapur, Dist. Patna.
- 9. The Branch Manager, Canara Bank SPL SME, Branch, Ashiyan Digha Road, Patna.
- 10. The Authorized Officer, Canara Bank SPL SME, Branch, Ashiyan Digha Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. K.N. Chaubey, Sr. Advocate Mr.Awadhesh Kumar Pandit, Advocate
For the Respondents 1 to 5	:	Mr. J.S. Arora, Sr. Advocate Mr. Gaurav Pratap, Advocate Mr. Himanshu Shekhar, Advocate Mr. Manoj Kumar, Advocate
For the respondent no. 7	:	Mr. Ray Saurabh Nath, Advocate Mr. Rajesh Sinha, Advocate
For the Bank	:	Mr. Siddharth Harsh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT



Date : 13-08-2024

I.A.No.02 of 2024

The present interlocutory application has been filed for amendment of prayer, by adding the following relief : -

1(v). For rejection of plaint to the extent of land purchased by the petitioner i.e. an area of 12342 sq.ft. (28.33 dec.) land of Survey Plot No.1380, Khata No.367 of Mauza Danapur Sahjadpur, Panchuchak, Sultanpur Gola Road,P.S. Danapur, District Patna purchased through certificate of sale dated 20/03/2021 issued by the Authorized Officer, Canara Bank SPL SME, Branch, Patna and subsequently through registered sale deed dated 14/02/2022 after succeeding in a open auction bid dated 28/08/2020 under the sale notice dated 18.07.2020 published in Daily Hindustan Newspaper by Canara Bank SPL SME, Branch, Patna under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002”.

2. For the reasons stated in the interlocutory application (I.A.No.02 of 2024), the same is allowed and which shall be treated as part of the main petition.

CWJC No.635 of 2023

3. The present petition has been filed under Article



227 of the Constitution of India for the following reliefs :

“(i) For a direction to dispose of the application filed by the petitioner on 04.11.2022 in the court of Sub Judge 1st, Danapur under order 1 Rule 10(2) and section 151 of C.P.C. for impleading as necessary party (intervener defendant) in Title Partition Suit No.87/2018 being a purchaser of an area of 12342 sq.ft. i.e. 28.22 dec. land of Survey Plot No.1380, Khata No.367 of Mauza Danapur Sahjadpur, Panchuchak, Sultanpur Gola Road, P.S.- Danapur, District-Patna purchased through certificate of sale dated 20/03/2021 issued by the Authorized Officer, Canara Bank SPL SME, Branch, Patna and subsequently through registered sale deed dated 14/02/2022 after succeeding in a open auction bid dated 28/07/2020 published in Daily Hindustan Newspaper by Canara Bank SPL SME, Branch, Patna under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 within a time fame and further to allow the petitioner as necessary party in the aforesaid Title Partition Suit.

(ii) For a direction to the learned lower court to decide the issue raised by the petitioner in his application regarding plot having an area 12342 sq.ft. i.e. 28.33 dec. land



of Survey Plot No.1380, Khata No.367 of Mauza Danapur Sahjadpur, Panchuchak, Sultanpur Gola Road, P.S.-Danapur, District Patna purchased through sale deed dated 14/02/2022 under auction bid of SURFAESI Act and exclude the area of aforesaid plot from proceeding of Title Partition Suit No. 87/2018 pending in the court of Sub Judge 1st, Danapur in view of provision of section 34 of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002.

(iii) For setting aside the order of injunction dated 25/05/2022 passed in Title Partition Suit No. 87/2018 behind back of petitioner more particularly to the extent of purchased area of Plot No. 1380, Khata No.367 of Mauza Danapur under SURFAESI Act proceeding.

(iv) The petitioner further prays for issuance of any other appropriate writ/ order/ direction to which he is found entitled too”.

4. Briefly stated, the facts of the case are that the respondent no.5 along with respondent nos. 1 to 4 brought a Title Partition Suit No.87/2018 against her husband/ the respondent no.6 and the respondent nos. 7 and 8 for partition of the suit property of Schedule 1 claiming 1/6th share for each of



the plaintiffs. The plaintiffs also sought declaring *void ab initio* two Development Work Agreements. The plaintiffs further sought temporary injunction against defendant no.1/respondent no.6 from alienating the suit land of the Schedule 1 and against other defendants for making any construction over the land of Schedule II. The petitioner claims himself to be owner of 28.33 decimals (12342 sq.ft.) of land of suit property of Schedule I having total area of 41 decimals of Survey Plot No.1380, Khata No.367 of Mauza- Danapur Sahjadpur, Panchuchak, Sultanpur Gola Road, P.S.- Danapur, District- Patna. This land having an area of 12342 sq.ft./28.33 decimals was mortgaged with Canara Bank, SPL SME Branch, Patna by the husband of respondent no.5, namely Baban Kumar, who has been made as a party respondent no.6 being absolute owner of the said property by executing a registered mortgage deed no.9723 dated 10.09.2015 against the loan amount which respondent no.6 took for the purpose of setting up and running industry of manufacturing Poultry and Cattle Feed in his capacity as one of the Directors of M/S Aryan Food & Agro Enterprises Pvt. Ltd. The respondent no.6 availed financial assistance from the respondent Bank/respondent no.9 in 2015 as cash credit limit of Rs.28.80 lakh and term loan of Rs.100 lakh and executed registered deed



of mortgage in favour of the Bank in order to create security for the amount of loan. When the borrower failed to pay the loan amount to the respondent Bank/respondent no.9, then the respondent Bank, by exercising power conferred under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act, 2002'), published a sale notice on 18.07.2020 for the mortgaged property for open auction bid on 28.08.2020 in a daily newspaper. The petitioner participated in the bid and obtained the bid property for a total consideration amount of Rs.1,94,15,000/- including TDS amount of Rs.1,45,612.50. Thereafter, a certificate of sale dated 20.03.2021 has been issued by the respondent no.10, the Authorized Officer of Canara Bank, Patna in favour of the petitioner. The sale of the scheduled property (auction property) was made free from all encumbrances known to Canara Bank, on deposit of the money demanded by the Bank. The petitioner was handed over the possession and vide letter dated 07.04.2021, the petitioner informed the Authorized Officer of Canara Bank with regard to receiving possession of auction property in E-auction. A certificate of sale with regard to auction property was issued by the concerned Bank on 20.03.2021 in



favour of the petitioner and finally, a registered sale deed was executed by the Authorized Officer of Canara Bank in favour of the petitioner regarding auction property having an area of 12342 sq.ft. i.e. 28.33 decimals of land of Survey Plot No.1380, Khata No.367, Mauza Danapur Sahjadpur, Panchuchak, Sultanpur Gola Road, P.S. Danapur, District Patna vide registered sale deed dated 14.02.2022. The petitioner applied before revenue authority for Mutation/Jamabandi of the purchased land in his name and Jamabandi has been created in the name of the petitioner by the revenue authority and, accordingly, rent receipts have been issued and land possession certificate has also been issued in the name of the petitioner. It is claimed that the SARFAESI proceeding initiated by the Canara Bank with regard to mortgaged property raised by the petitioner was within the knowledge of plaintiffs of Title Partition Suit No.87/2018 and a SARFAESI Appeal bearing S.A.No.256/2019 was filed by the respondents 1st set before the Debt Recovery Tribunal, for the State of Bihar under Section 17 (1) of the SARFAESI Act, 2002 seeking relief to quash the entire SARFAESI proceeding initiated under Section 13 (4) of SARFAESI Act, 2002. The said SARFAESI Appeal was finally dismissed vide judgment dated 05.02.2021. Thereafter, the



plaintiff nos. 1 to 5/respondent nos. 1 to 5 moved before the Debt Recovery Appellate Tribunal, Allahabad (DRAT) by preferring Appeal No. 51 of 2021 in which the petitioner has also been made a party being auction purchaser of the land in question. On receipt of notice, the petitioner has appeared before the DRAT, Allahabad and the matter is *sub-judice* before the DRAT, Allahabad. Meanwhile, the plaintiffs got an order of injunction dated 25.05.2022 passed in Title Partition Suit No.87/2018. When the local police started disturbing the possession of the petitioner and further construction over the purchased land of the petitioner in the light of injunction order, then the petitioner filed an application on 04.11.2022 in the court of learned Sub Judge 1st, Danapur under Order 1 Rule 10 (2) and Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code') for impleading him as a necessary party in Title Partition Suit No.87/2018 being a purchaser of an area of 12342 sq.ft. i.e. 28.33 decimals of land of the suit plot. Thereafter, during the pendency of the aforesaid petition filed by the petitioner for his impleadment, the petitioner moved before this Court by filing the present petition seeking the aforementioned reliefs.

5. Mr. K.N. Chaubey, learned senior counsel appearing



on behalf of the petitioner submitted that it is a classic case of fraud and concealment of facts by the plaintiffs and the suit filed by the plaintiffs should not be allowed to proceed any further. The plaintiffs of Title Partition Suit No.87/2018, i.e., respondents 1st set have filed the suit for partition of family property in between the plaintiffs and defendant no.1 of the said suit and the plaintiffs included the mortgaged property also in the Schedule of the partition suit knowing very well that 28.33 decimals of land of Survey Plot No.1380, Khata No.368 was already mortgaged with Canara Bank by the husband of the plaintiff no.5 on 10.09.2015. The plaintiffs were knowing fully well about the SARFAESI proceeding, the plaintiffs challenged the proceeding before the Debt Recovery Tribunal for the State of Bihar by filing SARFAESI Appeal No.256 of 2019 which was dismissed vide order dated 05.01.2021.

6. Mr. Chaubey further submitted that fraud vitiates everything and concealment of this fact about auction purchase of 28.33 decimals of land of Plot No.1380 by the plaintiffs amounts to active concealment and Mr. Chaubey placed his reliance on the decision of the Hon'ble Supreme Court in the case of *S.P. Chengalvaraya Naidu v. Jagannath* reported in *AIR 1994 SC 853: (1994) 1 SCC 1* wherein the Hon'ble



Supreme Court has held that a litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

7. Mr. Chaubey further relied on the decision of the Hon'ble Supreme Court in the case of *A.V. Papaya Sastry & Ors. vs. Government of A.P. & Ors.* reported in *2007 (2) PLJR (SC) 201* wherein the Hon'ble Supreme Court held that it is well settled principle of law that if any judgment and order is obtained by fraud, it cannot be said to be a judgment or order in law and such judgment, decree or order by the first court or by the final court has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

8. Mr. Chaubey also referred to the observation of the Chief Justice Edward Coke of England made about three centuries ago that "fraud avoids all judicial acts, ecclesiastical or temporal". Mr. Chaubey further submitted that by concealment of the fact of auction purchase, the plaintiffs obtained an injunction order on 25.05.2022 and hence such order is nullity.



9. Mr. Chaubey further submitted that the civil court has no jurisdiction to entertain the case related to property attached under SARFAESI Act, 2002 and quoted the provisions of Section 34 of the SARFAESI Act, 2002 which expressly bars the jurisdiction of the civil court 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 that no injunction shall be granted by any court or other authority in respect of any action taken or ought to be taken in pursuance of any power conferred by or under the provisions of SARFAESI Act or under the Recovery of Debts Due to Banks and Financial Institution Act, 1953.

10. Mr. Chaubey further submitted that as per Section 34 of the SARFAESI Act, the provisions of this Act overrides other laws. However, learned Civil Court did not consider the aforesaid aspect and delayed the matter by taking no decision on the application filed by the petitioner for impleading him as a party in Title Partition Suit and to decide the issue raised by the petitioner. However, Mr. Chaubey submitted that during the pendency of the present petition, vide order dated 30.06.2023, the impleadment petition of the petitioner was allowed and the petitioner was impleaded as a party defendant in the suit before



the learned trial court.

11. Mr. Chaubey further submitted that the injunction order dated 25.05.2022 granted by the learned lower court to the extent of petitioner's land is bad in the eyes of law as well as on facts because the property has been purchased under the proceeding of SARFAESI Act through the concerned Bank and no injunction would be applicable against the land of the petitioner which he purchased in auction. Thus, there was inherent lack of jurisdiction to proceed against the property of the petitioner.

12. Thus, Mr. Chaubey submitted that order of injunction dated 25.05.2022 passed in Title Partition Suit No.87/2018 to the extent of purchased land of the petitioner of Plot No.1380, Khata No.367 be set aside and the plaint be rejected to the extent of the land purchased by the petitioner.

13. Mr. J.S. Arora, learned senior counsel appearing on behalf of the respondents 1st set at the outset submitted that the petition has become infructuous so far as first relief is concerned. The petitioner has sought direction to the learned trial court for disposal of his application dated 04.11.2022 filed for impleadment in Title Partition Suit No.87/2018. Since the petitioner has been impleaded vide order dated 30.06.2023



passed by the learned trial court, the petition of the petitioner to that extent has become infructuous.

14. Mr. Arora further submitted that so far as challenge to the order of injunction dated 25.05.2022 is concerned, the petitioner has remedy under Order 43 Rule 1 (r) of the Code to file a miscellaneous appeal before the court of competent jurisdiction and his petition is not maintainable in a proceeding under Article 227 of the Constitution of India. On this issue, Mr. Arora relied upon the decision of the Hon'ble Supreme Court in the case of *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Ors. vs. Tuticorin Educational Society and Ors.* reported in (2019) 9 SCC 538 wherein the Hon'ble Supreme Court has held that the High Court ought not to have entertained the petition under Article 227 of the Constitution of India, if other remedy was available.

15. Mr. Arora further relied upon the decision of the Hon'ble Supreme Court in the case of *Mohamed Ali vs. V. Jaya & Ors.* reported in 2022 (4) PLJR (SC) 127 on the point that the High Court has committed a grave error in entertaining the revision petition under Article 227 of the Constitution of India challenging the *ex-parte* judgment and decree passed by the learned trial court and in quashing and setting aside the same in



exercise of powers under Article 227 of the Constitution of India.

16. Mr. Arora further submitted that if remedy lies elsewhere, the petitioner could not take recourse of Article 227 of the Constitution of India. Moreover, order of injunction is only against the party to the suit and will not operate or affect third parties. Mr. Arora referred to a decision of this Court in the case of *Mineral Development Ltd. vs. State of Bihar* reported in *AIR 1962 Patna 443* to buttress his point that no case of disobedience would lie against a person not a party in the order. Mr. Arora relied on the decision of the this Court in the case of *Ram Prasad Singh vs. Subodh Prasad Singh and Ors.* reported in *AIR 1983 Patna 278* again on the point that only parties can be made liable in a contempt proceeding for disobedience of the injunction order.

17. Mr. Arora further pointed out that interim reliefs are granted as an ancillary to the main relief. The injunction order dated 25.05.2022 has been passed to that extent only. It is a temporary measure and can always be altered.

18. Mr. Arora further submitted that so far as relief no. (ii) is concerned, the prayer in this regard is premature as the learned trial court is yet to decide the issue on the points raised



by the petitioner. Moreover, from the facts of the case, it is apparent that the respondent no.6 mortgaged the property without consent of co-owners and considering the auction sale of property at a throwaway price, such sale was set aside by the court and, on this point, he referred to the decision of the Hon'ble Supreme Court in the case of ***Olinda Fernandes vs. Goa State Cooperative Bank Limited and Ors.*** reported in ***(2016) 13 SCC 298.***

19. Mr. Arora further submitted that the injunction order passed by the learned Sub Judge is legal and valid in the eyes of law.

20. Mr. Arora further submitted that the claim of the petitioner is only with regard to 28.33 decimals of land of suit plot and the plaintiffs have filed the suit for partition with regard to total joint family property and the property purchased by the petitioner is only part of it. Therefore, there cannot be any part rejection of the plaint against the petitioner. Furthermore, it is a disputed question as to whether the plaintiffs were having knowledge about the claim of the petitioner at the time of filing of the suit and so it could not be said that there has been concealment. The partition suit has been filed in the year 2018, whereas the Canara Bank has filed the case in the Debt



Recovery Tribunal in the year 2019. The plaintiffs have not suppressed anything and have not violated any orders passed by any court. Rather the petitioner has concealed a number of facts from this Court. The petitioner has not apprised this Court about the learned trial court allowing his petition on 30.06.2023, which was filed under Order 1 Rule 10 (2) of the Code for his impleadment and thus relief no. 1 (i) has already been granted on 20.06.2023. This fact has been suppressed by this petitioner. Thereafter, the petitioner has also suppressed the fact that on 08.04.2023 the Debt Recovery Tribunal has passed the stay order, still the petitioner has been concealing the fact in question when the matter is *sub-judice* before the Debt Recovery Appellate Tribunal, though the petitioner has already appeared before the DRAT, Allahabad.

21. Mr. Arora further submitted that there is no application of Sections 34 and 35 of SARFAESI Act in the present case. Since partition suit has been filed in the year 2018, whereas the case has been filed in the Debt Recovery Tribunal by the Bank in 2019.

22. Mr. Arora further submitted that the petitioner has sought a number of reliefs in the present petition, but it is a settled principle of law that in one writ petition, only one relief



can be sought.

23. Thus, Mr. Arora submitted that there is no infirmity in the proceeding before the learned Sub Judge, Danapur and there is no requirement of any interference by this Court.

24. The learned counsels appearing on behalf of the respondent nos. 7, 9 and 10 supported the contention of the learned senior counsel appearing on behalf of the petitioner. The learned counsels for the respondent nos. 7, 9 and 10 submitted that it was a completely fraudulent act on the part of the plaintiffs. The plaintiffs fraudulently included the property sold to the petitioner in the suit property and got an injunction order suppressing this fact. The learned counsel for respondent nos. 9 & 10 further submitted that under Section 17 of SARFAESI Act, remedy is available to all aggrieved persons. The learned counsel further submitted that Section 34 of SARFAESI Act bars the jurisdiction of the civil court and in this regard, he referred to the decision of the Hon'ble Supreme Court in the case of *Jagdish Singh vs. Heeralal and Ors.* reported in *AIR 2014 SC 371* wherein the Hon'ble Supreme Court has held that jurisdiction of the civil court is completely barred.

25. In reply to the submission made on behalf of the respondents 1st set, Mr. Chaubey, learned senior counsel



appearing on behalf of the petitioner, submitted that Article 227 is the power of this Court for superintendence and to see that subordinate courts act within the bounds of law. As the court has entertained the suit barred by Section 34 of the SARFAESI Act and there has been fraud on part of the respondents 1st set, this Court is under a duty to intervene in the matter and set the things right. Mr. Chaubey further submitted that availability of alternate remedy would not be a bar in entertaining any application under Article 227 of the Constitution of India. Mr. Chaubey further submitted that when the matter has been heard at length and arguments have been concluded, it would not be proper to relegate the petitioner to seek alternative remedy and referred to the decision of the Hon'ble Supreme Court in the case of *Hirday Narain vs. Income Tax Officer* reported in *AIR 1971 SC 33* which has subsequently been relied by this Court in a number of cases. Thus, Mr. Chaubey submitted that there is no hindrance in entertaining the present petition and reiterated his contention on the merits of the case.

26. I have given my thoughtful consideration to the different aspects of the matter. As the petition dated 04.11.2022 filed by the petitioner under Order 1 Rule 10 of the Code has already been allowed vide order dated 30.06.2023 by the



learned trial court, obviously the said relief has become infructuous and this Court is not required to issue any direction with regard to relief no. 1 (i).

27. So far as availability of alternative remedy with regard to relief no.1 (iii) is concerned, ordinarily this Court would not like to entertain such petition where specific provision under the Code has been made providing for appeal against such order. However, considering the peculiar facts and circumstances of the case and also considering the fact that the matter has been heard on different occasions and the proceeding before the learned trial court being in teeth of the provisions of the SARFAESI Act so far as property of the petitioner is concerned, this issue is buried without any further discussion and the petition is held maintainable.

28. With regard to the relief sought for rejection of plaint or to the exclusion of the land purchased by the petitioner from the suit property is concerned, the petitioner is already before the learned trial court and has sought direction from this Court to the learned trial court to decide this issue. The petitioner has already raised the issue in his application regarding the purchased land seeking exclusion of the area of the suit plot from the proceeding of Title Partition Suit No.



87/2018 pending in the court of learned Sub Judge, Danapur and there could not be duality of the proceeding. Therefore, this Court directs the learned Sub Judge 1st, Danapur to take up the matter and decide this issue within a month from the date of receipt/production of a copy of this order having regard to the facts brought before it and the law applicable including the provisions of SARFAESI Act, 2002.

29. So far as contention of the petitioner about the order of injunction dated 25.05.2022 is concerned, it is the settled law that order of injunction would affect only the parties to the order. Since the petitioner was not party when the order for injunction was passed, the petitioner would remain unaffected by the injunction order. However, as the petitioner has now been impleaded as a party, he is within his rights to move appropriate application and make prayer to the learned trial court to modify the order of injunction in consideration of entirety of facts. The petitioner has already raised certain points about inclusion of his purchased property as the subject matter of suit land though Section 34 of the SARFAESI Act completely bars jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter for which a Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal is



empowered. Therefore, the claim of the petitioner that the learned Sub Judge has no jurisdiction to entertain the suit related to the land of the petitioner purchased under SARFAESI Act, the petitioner is at liberty to raise all issues before the learned Sub Judge 1st, Danapur for recall/modification of the order of injunction. If need so arises, the learned trial court is directed to take into consideration the facts and circumstances of the case and pass appropriate orders within a month of petitioner moving an appropriate application in this regard.

30. There has been submission with regard to the petitioner and the respondents 1st set indulging in concealment of facts and there has been vehement submission on behalf of the petitioner that the respondents 1st set committed fraud upon the learned trial court by not bringing to its notice the proceedings under SARFAESI Act with regard to the purchased land of the petitioner. As observed earlier, the issue relates to disputed question of facts and there has been claim and counter claim on the said point, it is better to leave this matter for appraisal of the learned trial court and the parties are directed to plead all facts and circumstances of the case before the learned trial court to enable it to arrive at a decision with regard to committing fraud by the respondents 1st set.



31. So far as concealment of the order allowing the impleadment petition is concerned, the petitioner has clarified the point in the interlocutory application that the fact was brought to the notice of the learned Coordinate Bench when the matter was taken up before it on 21.09.2023 and I think the explanation could be accepted.

32. With the aforesaid observations/directions, the instant petition stands disposed of.

33. Consequently, I.A.No.01 of 2023 also stands disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	09.07.2024
Uploading Date	14.08.2024
Transmission Date	NA

