

GAHC010238482023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/3518/2023

M/S. VANTAGE POINT COMMUNICATIONS,
A PARTNERSHIP FIRM THROUGH ITS PARTNERS MR. ARIJIT SAIKIA AND
MRS. MANOSHREE DAS @ MANASRI DAS, HAVING ITS OFFICE AT HOUSE
NO. 3, 18TH EAST BYE LANE, SUNDARPUR, OPP. NRL PETROL PUMP, R.G.
BARUAH ROAD, GUWAHATI-781005.

VERSUS

PUNJAB NATIONAL BANK AND 6 ORS.
CIRCLE SASTRA, NILGIRI MANSION, 1ST FLOOR, BHANGAGARH, G.S.
ROAD, GUWAHATI-781005.

2:THE STATE OF ASSAM
THROUGH THE COMMISSIONER AND SECRETARY
HOME AND POLITICAL DEPARTMENT
DISPUR ASSAM

3:THE DEPUTY COMMISSIONER CUM DISTRICT MAGISTRATE
KAMRUP(M) GUWAHATI ASSAM

4:THE ASSTT. COMMISSIONER AND EXECUTIVE MAGISTRATE
KAMRUP(M) ASSAM-781001.

5:THE COMMISSIONER OF POLICE
GUWAHATI ASSAM

6:RUPASHREE SAIKIA
W/O- LATE BIZIT SAIKIA
R/O- KETEKIBARI
TEZPUR SONITPUR
ASSAM-784154.

7:DHMITIMAN SAIKIA
S/O- LATE BIZIT SAIKIA

R/O- KETEKIBARI
TEZPUR
SONITPUR
ASSAM-784154

Advocate for the Petitioner : MR I S MAZUMDAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 22.05.2024

Heard Mr. I. S. Mazumdar, learned counsel for the petitioner and Mr. A. Ganguly, learned Standing Counsel, Punjab National Bank and Ms. N. Barman, learned counsel for the State respondents.

This is an application filed by the applicant/respondent No. 5 under Order 1 Rule 10 of CPC and under Section 482 Cr.P.C. to implead UCO Bank, Guwahati Main Branch as a respondent in WP(C)/ 3161/2023.

The case of the applicant/respondent No. 5 is that the property over which the writ petitioner (PNB) is seeking possession under SARFAESI Act, 2002 is already mortgaged to UCO Bank by its earlier owner and thus UCO Bank has the First Charge.

In view of the above, impleadment of UCO Bank has been sought in WP(C) 3161/2023 as party respondent, by the applicant/respondent.

Mr. A. Ganguly, learned Standing Counsel, PNB submits that the instant impleading application is not maintainable, inasmuch as the respondent has no right whatsoever for impleading party respondent in a writ proceeding filed by

the petitioner.

Ms. M. Barman, learned counsel for the State respondent submits that the UCO Bank is neither a necessary nor a proper party in the writ proceeding and as such, impleading application is not maintainable.

I have heard the parties and perused the materials available on record.

Order I Rule 10 of CPC under which the present I.A. has been filed is reproduced below for ready reference:-

10. Suit in name of wrong plaintiff.—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just. (2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Reading of Order 1 Rule 10 indicates that the Court can, at any stage of a proceeding either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective or complete adjudication of the issues involved in the suit.

In the present case, the impleadment of UCO Bank is sought on the basis that the property over which the writ petitioner is seeking possession under

SARFAESI Act, 2002, is already mortgaged to UCO Bank by its earlier owner and thus UCO Bank has the First Charge.

Assuming without admitting that the same property is the subject matter of mortgage with two different banks, it is for the concerned Bank to agitate its right in respect of mortgage itself.

The intention of the applicant appears to delay the recovery proceedings by resorting to implead the UCO Bank.

Be that as it may, the presence of UCO Bank is not necessary for effective adjudication of the issues involved in the writ petition. As such, the impleading application stands rejected.

JUDGE

Comparing Assistant