

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 57 OF 2015

1. The Manager,
Hingoli Peoples Cooperative
Bank Ltd., Branch Jalna,
Old Mondha, Jalna

2. Recovery Officer,
Hingoli Peoples Cooperative
Bank Ltd., Branch Jalna,
Old Mondha, Jalna

PETITIONERS

VERSUS

1. Manoj Shrirangji Agrawal,
Age : 45 years, Occu. Business

2. Satish Shrirangji Agrawal,
Age : 55 years, Occu. Business
Both r/o Civil Club Road,
Karwa Nagar, Jalna

3. Sau Asha Satish Agrawal,
Age : 53 years, Occu. Household
R/o Navapur, Tq. Navapur,
District Nandurbar

4. Sau Sangita Kailash Agrawal,
Age : 49 years, Occu. Household
R/o Khanbara, Tal. Navapur,
District Nandurbar

5. Sau Sunita Gopal Mor,
Age : 51 years, occu. Household,
R/o Partur, Tq. Partur,
District Jalna

RESPONDENTS

Mr. A.S. Bajaj, Advocate for the petitioners
Mr. Sanket Kulkarni, Advocate for respondents
No. 1 to 4
Mr. Swapnil Patunkar, Advocate I/b J.P. Legal
Associates for respondent No. 5

CORAM : M.T. JOSHI, J.

DATE : 13/07/2015

ORAL JUDGEMENT :

1. Rule. Rule made returnable forthwith. With consent of learned counsel for the parties, heard finally.

2. Aggrieved by the order dated 21st April, 2015, passed by the 3rd Joint Civil Judge Senior Division, Jalna below Exhibit-21 in Special Civil Suit No. 10/2015, dismissing the application of the present petitioners filed for rejection of the plaint as per Order-VII Rule 11 of the Code of Civil Procedure, the present civil revision application is preferred.

3. Respondent No. 5 – Sunita filed suit bearing Special Civil Suit No. 10/2015 for partition, possession and declaration against the defendants, including the present petitioners. It is the case of this original plaintiff that the property mortgaged with the present petitioners regarding which the proceeding under the

provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") has been initiated.

. The case of the plaintiff, in short, is that the property was purchased though in the name of the borrowers i.e. the other respondents in the present revision application, those were, in fact, purchased from the nucleus of the joint family business and as such, those are the joint family properties and therefore, she had a share in the same and as such, the suit was filed.

4. The petitioners Bank has already started the proceeding under the SARFAESI Act. In the circumstances, the application (Exhibit-21) for rejection of the plaint was filed by them in the trial court.

5. The learned 3rd Joint Civil Judge Senior Division, Jalna, however, held that the civil court shall have jurisdiction to entertain the suit as the dispute is of civil nature and therefore, the application came to be rejected.

6. Mr. A.S. Bajaj, learned counsel for the petitioners, relied on the ratio laid down in the case of **"Jagdish Singh Vs. Heeralal and others"**, reported in **(2014) 1 S.C.C. 479**, wherein it is held that the expression "any person" as is found in section 17 of the SARFAESI Act, would cover any person, including a person who claims the property as Hindu Undivided Family property and therefore, only the Tribunal has jurisdiction to decide the issue and the civil court shall not have any jurisdiction.

7. Learned counsel for respondent No. 5, however, placed reliance on the decision dated 21st March, 2011 rendered by another learned Single Judge of this Court in Civil Revision Applications No. 29 of 2011, 30 of 2011 and Appeal against Order No. 33 of 2011. He placed a copy of the said decision on record, which is accepted on record and marked "X" for the purposes of identification.

. The reading of the order dated 21st March, 2011 would show that the Debts Recovery Tribunal is not a civil court. The distinction between the two under

section 9 of the Code of Civil Procedure and the limited jurisdiction under section 17 of the SARFAESI Act will have to be taken into consideration and therefore, disagreeing with the ratio in the case of "**State Bank of India V. Jgishaben B. Sanghavi and others**", reported in **2011 (2) Mh.L.J. 342**, a reference was proposed to the Hon'ble the Chief Justice for constitution of appropriate Bench.

8. The order is dated 21st March, 2011 while the decision in the matter of "**Jagdish Singh Vs. Heeralal and others**" (cited supra) by the Hon'ble Supreme Court of India is dated 30th October, 2013. In the case of "**Jagdish Singh Vs. Heeralal and others**", as already pointed out, it was declared by the Supreme Court of India that even the claim of being a coparcener in the Hindu Undivided Family property – the secured property, is beyond the jurisdiction of the civil court and the term "any person" aggrieved found in section 17 of the SARFAESI Act even covers such an aggrieved person.

9. In that view of the matter, the decision of the learned 3rd Joint Civil Judge Senior Division, in the

present case, cannot be sustained. In the result, the following order :

10. The civil revision application is allowed with costs. The order dated 21st April, 2015, passed by the 3rd Joint Civil Judge Senior Division, Jalna below application (Exhibit-21) in Special Civil Suit No. 10/2015 is hereby set aside.

. Instead, the application (Exhibit-21) filed by the present petitioners in Special Civil Suit No. 10/2015 is allowed and the plaint filed by the respondent No. 5 in the said suit is hereby rejected.

. The present civil revision application accordingly stands disposed of.

11. In view of above order, the civil application No. 6317/2015, filed by the respondent No.5, does not survive and it stands dismissed.

[M.T. JOSHI]
JUDGE