

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13015 of 2018

Abhimanyu Kumar Singh Son of Sri Arjun Singh, Resident of Village -
Singhi Khurd, Ward No. 1, P.O. and P.S. - Arrah Town, District - Bhojpur.

... .. Petitioner

Versus

1. The Branch Manager, I D B I Bank Ltd. Uma Complex Branch, Fraser Road, Patna.
2. M/s Jai Om Fertilizers Distributors Pvt. Ltd. Registered office at Rukenpura Bailey Road, Patna through its Director Sri Arjun Singh.
3. Sri Arjun Singh Son of late Rajnath Singh.
4. Smt. Bimla Devi, wife of Sri Arjun Singh, Resident of Mohalla-Rukunpura, Near Singh Petrol Pump, P.O.-B.V. College, P.S.-Pupespur, District-Patna.
5. Sri Badri Kumar Mittal Son of Sri Pawan Kumar Mittal, Resident of G/2A, Pushpa Vihar Colony, Exhibition Road, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.P.K. Shahi, Senior Advocate Mr.Vipin Kumar, Advocate
For the Respondent/s	:	Mr.Arbind Kumar Jha, Advocate Mr.Vijay Kumar Verma, Advocate
For the IDBI Bank	:	Mr.Shivendra Kumar Roy, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 18-11-2019 Although the matter has been listed under the heading ‘For Office Notes’ with the consent of the parties it has been taken for final disposal.

Petitioner in the present case is seeking following reliefs :-

“a. For quashing of judgment/order dated 08.06.2018 passed in Appeal No. 130/2016 by the learned Chairperson Debt Recovery Appellate Tribunal, Allahabad whereby appeal of the petitioner has been dismissed.

b. For quashing of judgment/order dated 29.04.2016 passed in Appeal No. 1/2016 by the presiding officer Debt Recovery Tribunal, Patna



whereby affirmed the order dated 05.10.2015 passed in R.P. Case No. 151 of 2013.

c. For quashing of order dated 05.10.2015 passed in R.P. Case No. 151/2013 arising out of O.A. No. 29.2013 by the Recovery Officer Debt Recovery Tribunal, Patna.

d. For quashing of order dated 02.09.2014 passed in R.P. Case NO. 151/2013 whereby the learned Recovery Officer has attached the HUF property including petitioner's share also.

e. For quashing of order dated 13.11.2014 passed in R.P. Case No. 151/2013 whereby learned Recovery Officer has ordered to sale the property attached vide order dated 02.09.2014 by Public auction.

f. For direction to the respondent authority to carve out the share of the petitioner out of mortgaged property i.e. Khata No. 230. Thana & Anchal Sasaram, Mauja-Basantpur, Khata No. 46, Plot No. 90, Area 77 Decimal and then only sale remaining of it for realization of outstanding dues of the Bank.

g. For any other relief/reliefs which petitioner may be found entitled in the facts and circumstances of the case.”

It is the case of the petitioner that the property in question which was mortgaged with the Bank by his father and an equitable mortgage was created by way of deposit of title deed happened to be a joint hindu family property. He has relied upon a compromise order said to have been passed by Lok Adalat, Ara on transfer of Title Suit No. 140 of 1999 from the court of learned Sub Judge IV, Ara. The compromise petition has been enclosed with a typed copy of order dated 21.09.2000 (Annexure '1'). This Court has been shown from the compromise petition and the schedule enclosed with the



compromise petition that the land in question had fallen in the joint share of Sri Arjun Singh and Smt. Bimla Devi (Defendant Nos. 1 and 2) along with their sons. Annexure '1/A' has been referred to submit that the various land purchased in different names of the family members were brought in the joint hotch-potch of the Hindu undivided family and those were subject matter of partition. Some of the land which were purchased in the name of Arjun Singh (Father of the petitioner) had fallen in the schedule allotted to the undivided family of Arjun Singh and his sons who were minor at the relevant time. This petitioner was a minor at the time of filing of the compromise petition and passing of the order by the Lok Adalat is an admitted position.

It is stated that Arjun Singh along with his wife started a proprietorship business of M/S OM Fertilizers. In the year 2003, the business was converted in a Private Limited Company in the name and style of Jai OM Fertilizers Distributors Pvt. Ltd. having its' registered office at Rukunpura, Bailey Road, Patna. Arjun Singh and Bimla Devi were the directors of the said Company. In connection with the said business, for obtaining working capital facilities of one crore, the property in question was provided as a collateral security. Initially the cash credit facility of one crore was provided which



was later on enhanced from time to time and ultimately the cash credit had gone to Rs. Five Crores. The financial assistance was availed during the period 2007 to 2009. The petitioner admits that the borrowers (Respondent Nos. 3 and 4) who happened to be his father and mother respectively executed irrevocable and unconditional guarantee in favour the Bank but it is the case of the petitioner that they had not taken consent of the petitioner while mortgaging the joint Hindu family property in question.

It appears that on failure to repay the debts amount when the Bank initiated the proceeding under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the 'Act of 1993') giving rise to O.A. No. 29 of 2013 against respondent nos. 3 and 4 it was decided ex-parte vide order dated 02.09.2013. The petitioner submits that pursuant to the certificate of recovery issued by Debts Recovery Tribunal, Patna a recovery proceeding being R.P. No. 151 of 2013 has been initiated by the Recovery Officer and the property of Schedule 'A' and 'B' including the HUF property in which the petitioner has interest and share were attached and a sale notice was issued. When the petitioner got information of auction sale being conducted in respect of the property in question, he filed an objection before the Recovery Officer on



15.09.2015. The petitioner also moved this Court in C.W.J.C. No. 15326 of 2015 which was disposed off vide order dated 29.09.2015 as contained in Annexure '4' to the writ application. Vide Annexure '4' the Recovery Officer was directed to consider the objection of the petitioner in accordance with law.

It appears that the objection of the petitioner was disposed off by the Recovery Officer on 05.10.2015 (Annexure '5'). Aggrieved by the rejection of his objection, petitioner challenged the order dated 05.10.2015 before the Presiding Officer, Debts Recovery Tribunal, Patna (in short 'Tribunal') in Appeal No. 01 of 2016. The Presiding Officer of the Tribunal held that the petitioner failed to establish that he had any share in the said property. The Tribunal rather held that the properties are self acquired properties and have been purchased by Sri Arjun Singh and Smt. Bimla Devi (Defendant Nos. 2 and 3 in the O.A.). The objection of the petitioner with respect to the valuation of the property was also rejected by the Tribunal.

Again being aggrieved by the order dated 29.04.2016 passed in Appeal No. 01 of 2016 by the Tribunal, the petitioner preferred a writ application before this Court vide C.W.J.C. No. 8554 of 2016 but the petitioner was relegated to the alternative remedy of appeal.



In the aforesaid circumstance, the petitioner moved before the Debts Recovery Appellate Tribunal, Allahabad in Appeal S.R. No. 130 of 2016. The Appellate Tribunal has rejected the contention of the petitioner that he has got 1/4th share in the properties mortgaged with the Bank. The Tribunal has concluded that there being an admitted position that the property was purchased by Arjun Singh (Respondent No. 3) in his personal name if the appellant was claiming that it has been purchased from the funds of the joint Hindu family, the burden of proof lies upon him but no substantial evidence to that extent has been brought on record.

The Tribunal took a view that the title had vested with the father of the petitioner and if he has mortgaged the property and Bank has accepted the mortgage after due verification of the record when there was no occasion to have any doubt about the title of the property, the Bank has got every right to sale the property for recovery of the loan.

The submission of learned counsel for the appellant-petitioner with regard to the under valuation of the property has also been rejected by the Appellate Tribunal.

Learned Senior Counsel for the petitioner has submitted before this Court that from Annexure '1/A' to the writ



application it would appear that the property in question was subject matter of partition and Arjun Singh along with his wife and his sons had been given schedule 'B' in their share. Learned counsel submits that the fact that the petitioner is a coparcener and the property in question had been mortgaged without his consent, the 1/4th share of the petitioner cannot be attached and auction sold.

On the other hand, learned counsel for the Bank has submitted that the property has been mortgaged by respondent no. 3 in favour of the bank for securing the cash credit facility of Rs. Five Crores and hence the respondent Bank have right to enforce the mortgage over the said property for recovery of the amount. Regarding the right of redemption, it is submitted that in terms of Rule 60 of Schedule II to the Income Tax Act, the defaulter or any person whose interest are effected by sale may within 30 days apply to the Recovery Officer to set aside the sale on depositing the entire amount specified in the proclamation of sale with interest at the rate of 15% calculated from the date of proclamation of sale when the deposit was made. It is further submitted that an another objection petition was filed by one Abhay Pratap Singh and Premseela who is brother and mother of respondent no. 3 for recalling attachment



order dated 02.09.2014. The present objection petition was filed by this petitioner on the same lines. The sole intention of filing of such objection petition to create hindrance in the conclusion of the recovery proceeding.

In course of argument, learned Senior Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court reported in (2016) 3 SCC 298; (2004) 3 SCC 548 and (2018) 7 SCC 646 to submit that the Tribunal as well as the Debts Recovery Appellate Tribunal had failed to consider that the property in question is a coparcenary property in which the borrower along with his two sons had got share.

Having heard learned Senior Counsel for the petitioner as well as learned counsel representing the Bank and upon a careful perusal of the records, this Court finds that earlier the writ application was entertained and opportunities were granted to the petitioner to save the property in question by settling the dues of the Bank in terms of proclamation of sale.

The last order dated 19.09.2019 reads as under :-

“After hearing for some time what has appeared from the submissions made by learned counsel for the Bank is that in terms of Rule 60 of Schedule II of the Income Tax Act, 1961 unless a person who is looking for setting aside of the sale files an application together with amount mentioned in the proclamation for sale, the same cannot be entertained. Learned counsel for the Bank submits that if the petitioner deposits the amount



mentioned in the proclamation for sale he would have no difficulty in accepting his submission that he may retain the property but the submission of learned senior counsel for the petitioner in the present case is that he would be ready to deposit only the auction amount with interest and penalty and as such this stand of the petitioner is not acceptable to the Bank.

Learned senior counsel for the petitioner having understood the difficulty in persuading this Court to take a view contrary to the Rule submits that in such circumstance he may be granted some time to persuade the auction purchaser and negotiate the matter with him to save his property.

In the opinion of this Court that would be a totally different matter and the Court would have no occasion to make any observation on this issue.

As prayed by learned senior counsel for the petitioner, let this matter be listed on 15th October, 2019 maintaining its position for final disposal.”

This Court finds from the materials available on the record that the land in question was earlier acquired in the individual name of Arjun Singh. It was mutated in his individual name and then the same is said to have been brought within the purview of the Title Suit No. 140 of 1999 (**Shri Uday Pratap Singh & Ors vs. Shri Arjun Singh & Ors**). Arjun Singh had also filed a Title Suit bearing No. 198 of 1999.

The Sheet anchor of the submissions of learned Senior Counsel for the petitioner is Annexure ‘1’ to the writ application. It is stated to be a photocopy of the order-sheet of Lok-Adalat but in fact it is a typed copy of an order-sheet containing the following two orders :-



“20.9.2000 Record received without T.C. and
21.9.2000 without verification from the Court of
IVth Sub-Judge, Arrah. Register and
put up for hearing

_____	Sd/- Illegible	Dictated
	21/9/2000	-Sd/ Illegibel
	Judge	Judl. Member

Later on Both the parties are in attendance.

21.9.2000 Record is put up for hearing. Heard both the parties and perused the record. Both sides are present with their lawyer. Both sides admitted that out of their free will they compromised the suit and now good feeling has been restored.

A compromise petition is available on the record which according to the report of the Serishtedar concerned is in order.

After hearing the parties and perusal of entire record, the compromise petition is accepted. Let an award be prepared. The terms and conditions mentioned in the compromise petition shall form part of the award.

Sd/- Illegible	Dictated
21/9/2000	Sd/- Illegible
Judge	Judl. Member

Permanent Lok Adalat Permanent Lok Adalat”

With the typed copy of the order, there is a copy of petition showing that the parties-the plaintiffs and Defendant No. 3 on the one hand and Defendant Nos. 1 and 2 on the other hand have entered into a compromise. The petition no where shows signature of the parties and it is not a certified copy obtained from the Court. Even the Schedules ‘A’ and ‘B’ attached to the compromise petition which has been brought on record no where show signature of the parties. Thus neither the



order-sheet nor the compromise petition are certified copies. Petitioner has described these documents as photocopy of the order-sheet which is not a correct statement.

A perusal of Annexure - '1' raises a question as to whether it is a clinching document to conclude that the mortgaged property happened to be a joint Hindu family property in which petitioner had got a share.

Petitioner has not filed copy of the plaint of the Title Suit and certified copies of the orders passed by learned Sub-Judge IV, Arrah in the Title Suit. Certified copies of the order showing that learned Sub-Judge IV, Arrah had transferred the records to Lok-Adalat has not been brought on record. Petitioner has made statement in the writ petition that an Award was prepared but copy of the Award has not been produced at any stage. In some of the paragraphs of the writ petition, petitioner has described the order of the Lok-Adalat as contained in Annexure '1' a partition decree. As per Section 21 of the Legal Services Authority Act, 1987 an Award of the Lok Adalat has a force of decree of a Civil Court but neither any Award nor any document in form of a decree has been produced by the petitioner.

In this connection, this Court extract the entire



Regulation 17 of the National Legal Services Authority (Lok-
Adalat) Regulations, 2009 as under :-

“17. Award. - (1) Drawing up of the award is merely an administrative act by incorporating the terms of settlement or compromise agreed by parties under the guidance and assistance from Lok Adalat.

(2) When both parties sign or affix their thumb impression and the members of the Lok Adalat countersign it, it becomes an award. (see a specimen at Appendix-I) Every award of the Lok Adalat shall be categorical and lucid and shall be written in regional language used in the local courts or in English. It shall also contain particulars of the case viz., case number, name of court and names of parties, date of receipt, register number assigned to the case in the permanent Register (maintained as provided under Regulation-20) and date of settlement. Wherever the parties are represented by counsel, they should also be required to sign the settlement or award before the members of the Lok Adalat affix their signature.

(3) In cases referred to Lok Adalat from a court, it shall be mentioned in the award that the plaintiff or petitioner is entitled to refund of the court fees remitted.

(4) Where the parties are not accompanied or represented by counsel, the members of the Lok Adalat shall also verify the identity of parties, before recording the settlement.

(5) Member of the Lok Adalat shall ensure that the parties affix their signatures only after fully understanding the terms of settlement arrived at and recorded. The members of the Lok Adalat shall also satisfy themselves about the following before affixing their signatures:

- (a) that the terms of settlement are not unreasonable or illegal or one-sided; and
- (b) that the parties have entered into the settlement voluntarily and not on account of any threat, coercion or



undue influence.

(6) Members of the Lok Adalat should affix their signatures only in settlement reached before them and should avoid affixing signatures to settlement reached by the parties outside the Lok Adalat with the assistance of some third parties, to ensure that the Lok Adalats are not used by unscrupulous parties to commit fraud, forgery, etc.

(7) Lok Adalat shall not grant any bail or a divorce by mutual consent.

(8) The original award shall form part of the judicial records (in pre-litigation matter, the original award may be kept with the Legal Services Authority or committee, concerned) and a copy of the award shall be given to each of the parties duly certifying them to be true by the officer designated by the Member-Secretary or Secretary of the High Court Legal Services Committee or District Legal Services Authority or, as the case may be, the Chairman of Taluk Legal Services Committees free of cost and the official seal of the Authority concerned or Committee shall be affixed on all awards.”

Neither before the Tribunal nor before the Appellate Tribunal the petitioner has brought on record any material to demonstrate that in terms of order dated 21.09.2000 an award was prepared and parties to the suit acted on the basis of the said award. The fact remains that the property in question is in the individual name of the father of the petitioner, the mutation and rent receipts remained in his individual name and he could very well satisfy the Bank that he happened to be the absolute owner of the property and for the business he was mortgaging the land with the Bank by deposit of title deed.



While, this Court agrees with the proposition of law as argued by learned Senior Counsel for the petitioner that in a Hindu undivided family there would be a presumption of jointness and the burden to prove that there was a partition lies upon the person who claims the partition. It is well settled that even within a Hindu undivided family, a member of the family may create self acquired and personal property. It is only when such self acquired property is brought in the joint hotch-potch of the family the property acquires status of a joint family property.

This court is of the considered opinion that on the basis of Annexure - '1' alone neither the DRT and Appellate Tribunal nor this Court can take even a prima-facie view that the mortgaged property was a joint family property and the same was allotted in share of Arjun Singh father of the petitioner along with his wife and two sons. The property was purchased in individual name of Arjun Singh, said Arjun Singh was having his own business and had a source of income and nothing has been brought on record to show that the mortgaged property was brought by said Arjun Singh in the joint hotch-potch of his undivided family along with his two sons. The petitioner could have shown it by bringing on record the certified/true copy of the plaint and the Award if any prepared by the Lok Adalat in



accordance with Regulation '17'.

In fact Arjun Singh purchased the property in his own name, got it mutated, continued to pay rent and then mortgaged the same by deposit of title deed go a long way to show that he always treated this property as his individual property. Here the Court makes it clear that these observations are, however, only for the purpose of this case, on the basis of materials available on the record and it will not preclude the petitioner from seeking his remedy against Respondent nos. 3 and 4 before appropriate court if so advised.

As regards the issue of under-valuation of the property sold to Respondent No. 5, the DRT has recorded in its' order dated 29.04.2016 in Appeal No. 01/2016 that the said issue was already examined by the Recovery Officer and the objection was disposed of vide order dated 19.08.2015.

This Court finds that the petitioner has not challenged the order dated 19.08.2015 which was an appellable order. No material has been brought before DRT to show by way of example of recent transaction of land in the concerned locality that any property was sold at a higher price.

In the light of aforesaid discussions, this Court finds no reason to interfere with the impugned order at this stage.



Bank has informed that still huge amount of over 8 Crores are left to be recovered in this account.

No relief may be granted to the petitioner.

Application is, thus, dismissed.

(Rajeev Ranjan Prasad, J)

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