

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 454 of 2021

1. Neha Singhania D/o Shri Kailash Agrawal, Aged About 35 Years Presently R/o. E-2, Vrindavan Colony, Tilda, Tehsil Tilda Nevra, District Raipur Chhattisgarh.
2. Megha Agrawal, D/o Shri Kailash Agrawal, Aged About 33 Years Presently R/o Ward No. 15, Station Road Sakti, Tehsil Sakti, District Janjgir Champa (Chhattisgarh).

---- Petitioners

Versus

1. Kailash Agrawal S/o Shri Madanlal Agrawal, Aged About 63 Years R/o. Ward No. 11, Pithoura, Tehsil Pithoura, District Mahasamund Chhattisgarh.
2. Sarita Agrawal, W/o Shri Kailash Agrawal, Aged About 58 Years R/o. Ward No. 11, Pithoura, Tehsil Pithoura, District Mahasamund Chhattisgarh.
3. Priyanshu Agrawal, S/o Shri Kailash Agrawal, Aged About 31 Years R/o. Ward No. 11, Pithoura, Tehsil Pithoura, District Mahasamund Chhattisgarh.
4. State Of Chhattisgarh Through Collector Mahasamund, District Mahasamund Chhattisgarh.
5. UCO Bank Main Branch, Through Its Branch Manager, Jaistambh Chowk, K.K. Road, Raipur, Tehsil And District Raipur Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Surfaraj Khan, Advocate
For Respondent/ State	:	Shri Sameer Uraon, G.A.
For Respondent No.5	:	Shri P.R. Patankar, Advocate with Shri Vaibhav Dhar Diwan, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

10.09.2021

Heard.

1. This petition under Article 227 of the Constitution of India has been brought against the order dated 2.9.2021 passed by the Court of Civil Judge, Class-II, Pithora, District Mahasamund, by which the application under Order XXXIX Rule 1 & 2 of the CPC has been dismissed by the

trial Court.

2. It is submitted by counsel for the petitioners that respondents No.1 to 3 have mortgaged the joint family property with respondent No.5 for the purposes of obtaining loan. As the loan has not been repaid by respondents No.1 to 3, respondent No.5 is proceeding to make recovery of the loan by auctioning the property under the mortgage.
3. The petitioners have filed a civil suit praying for reliefs of declaration of the title, partition and possession over the property in question on the basis of their entitlement. The application filed under Order XXXIX Rule 1 & 2 of the C.P.C. has been dismissed by the learned trial Court, which is an erroneous order, therefore, this petition has been filed.
4. Reliance has been placed on the judgment of Supreme Court in the case of **Vineeta Sharma vs. Rakesh Sharma and Ors.**, reported in **2020 (9) SCC 1**, in which the rights of daughters on the joint family property has been defined. It is submitted that in case the property is auctioned then the purpose of filing civil suit would be defeated, hence, the petition be admitted and the interim relief be granted to the petitioners.
5. Learned State counsel appearing for respondent No.4 makes a formal objection.
6. Learned counsel for respondent No.5 submits that the impugned order is sustainable. The civil suit filed by the petitioners itself is not maintainable under the provisions of Section 34 of the SARFAESI Act, 2002. Further, the petitioner had the remedy to file an appeal against the impugned order under Order XLIII Rule 1 of the CPC. Apart from that, the petitioners also had the remedy of raising objection before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

7. Considered on the submissions. Although, respondent No.5 has been made a party in the civil suit but there is no pleading against him and there is no relief claimed from him. The position in law on this point is clear that the petitioners have remedy available of filing an appeal against the impugned order, under Order XLIII Rule 1 of the C.P.C.
8. The prohibition under Section 34 of the SARFAESI Act is very clear that no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts due to Banks and Financial Institutions Act. The jurisdiction of this Court under Article 227 of the Constitution of India is very limited only to see that the Sub-Ordinate Courts and Tribunals have acted within the parameters of law, as held in the case of **Mohd. Yunus vs. Mohd. Mustaqim**, reported in **(1983) 4 SCC 566** by the Hon'ble Supreme Court. Hence, in that regard, I do not find any reason to entertain the present petition and interfere with the impugned order.
9. Hence, this petition is dismissed and disposed of at motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge