

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 24961 OF 2013

Sarojini Mohanty and another ***Petitioners***

Mr. Dwarika Prasad Mohanty, Advocate

-versus-

Branch Manager, UCO Bank, Balasore ***Opp. Parties***
and another

Ms. C.Kasturi, Advocate

(For Opposite Party No.1)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
27.07.2022

Order No.

8. 1. This matter is taken up through Hybrid mode.
2. This writ petition has been filed assailing the order dated 9th October, 2013 (Annexure-2) passed by the learned Second Additional District Judge, Balasore in FAO No.10 of 2013 (27 of 2011), whereby he reversed the order dated 12th January, 2011 (Annexure-1) passed by learned Civil Judge (Senior Division), Jaleswar in IA No.222 of 2010 (arising out of CS No.671 of 2010) by allowing an application under Order XXXIX Rules 1 and 2 CPC restraining the Opposite Parties therein including the Bank, namely United Commercial Bank, Chouki Branch, Chowki in the district of Balasore from transferring, auctioning or changing the nature and character of the suit schedule property in any manner till disposal of the suit.
3. Mr. Mohanty, learned counsel for the Petitioners submits that the CS No.671 of 2010 has been filed for partition.

The suit property is a joint family property. Without consent of the other co-sharers, Defendant No.3/Opposite Party No.5 has mortgaged the said suit schedule property with the UCO Bank, Chowki Branch-Opposite Party No.1 at Balasore to avail a loan. The Plaintiffs came to know about the same when the Opposite Party No.1 took step to auction the property. Hence, they filed CS No.671 of 2010 for partition. Along with the plaint, Plaintiffs/Petitioners filed an application under Order XXXIX Rules 1 and 2 CPC in IA No.222 of 2010, which was allowed on contest by restraining the Opposite Parties in the said application including the Opposite Party Nos.1 and 2 from selling, transferring, auctioning or changing the nature and character of the suit schedule property till disposal of the suit. Assailing the same, the Opposite Party Nos. 1 and 2 filed an appeal under Order XLIII Rule 1 (r) CPC. Learned Second Additional District Judge, Balasore holding that in view of Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act), the suit is not maintainable, allowed the appeal by vacating the order of injunction granted against Opposite Party Nos. 1 and 2.

3.1 Mr. Mohanty, learned counsel for the Petitioners further submits that finding a *prima facie* case in favour of the Petitioners, this Court vide order dated 25th November, 2013 directed that since the disputed property is a joint family property, *status quo* as on that date shall be maintained by the parties and none of the members of the joint family shall transfer, alienate or encumber the same in any manner till the

next listing of the case. The said interim order is continuing till date. It is his case that in view of Section 34 of the SARFAESI Act the petition for injunction may not be maintainable, but the finding of the learned appellate Court that the suit is not maintainable, is erroneous. Hence, the impugned order under Annexure-2 itself is not sustainable, as the same is based on erroneous finding. He further submitted that since the interim order is continuing for last nine years, interest of justice will be best served if the suit, which is at the state of hearing, is directed to be disposed of at an early date directing to continue such interim order till disposal of the suit.

4. Mrs. Kasturi, learned counsel for Opposite Party No.1 vehemently objected to the above submission and submits that the suit schedule land is exclusive property of Defendant No.3/Opposite Party No.5. He has mortgaged the same for availing loan. Due to non-payment of the loan dues authorities have taken pleas under Section 13 of the SARFAESI Act. In view of Section 34 of the said Act a petition for injunction is not maintainable. The action of the Bank can only be challenged before the Debts Recovery Tribunal having local jurisdiction to try the same. As such, the writ petition merits no consideration and is liable to be dismissed.

5. Upon hearing learned counsel for the parties, this Court feels it appropriate to refer Section 34 of the SRAFESI Act, which is quoted below:-

34. Civil court not to have jurisdiction.—No civil court shall have jurisdiction 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 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, 1993 (51 of 1993).”

It clearly stipulates that an application for injunction is not maintainable before any Civil Court. However, since the issue of maintainability of the suit is not the subject matter of dispute in the present writ petition, I am not inclined to record any opinion on the same. As such, the issue of maintainability of the suit is kept open to be decided in the suit.

6. In view of the above, I find no infirmity in the impugned order under Annexure-2. Accordingly, the writ petition being devoid of any merit stands dismissed.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge