

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No. 2173 of 2022

Sidhanta Narayan Singh Deo ***Petitioner***
Ms. Rajdipa Behura, Advocate

-versus-

***The Chief Manager-cum-
Authorized Officer, Oriental
Bank of Commerce and
Others*** ***Opp. Parties***

Mr. Anjan Kumar Biswal, Advocate for Bank

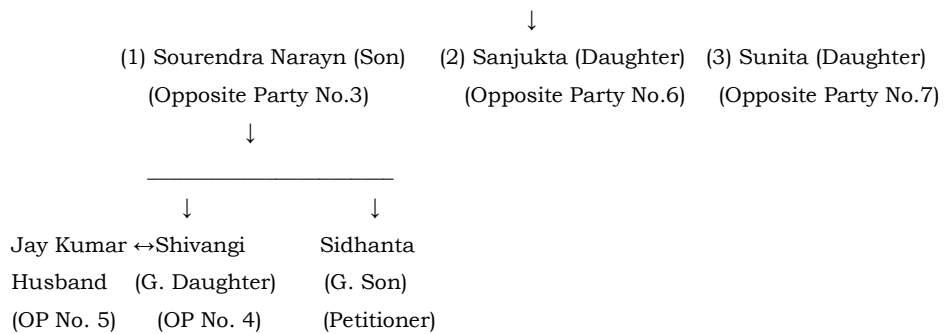
**CORAM:
JUSTICE JASWANT SINGH
JUSTICE M. S. RAMAN**

**ORDER
09.03.2022**

Order No.

- 02.** 1. This matter is taken up by virtual/physical mode.
2. The brief facts of the case are that the disputed property was originally vested under the ownership of Hirendra Pratap Singh Deo. He had a wife named R.R. Laxmi. They had one Son i.e. Sourendra Narayan Singhdeo (Opposite Party no.-3), two daughters i.e. Sanjukta Shah Deo (Opposite Party No. 6) and Sunita Singh Deo (Opposite Party no. 7). Further, Sourendra Narayan Singhdeo (Opposite Party no.-3) had one daughter named Shivangi (Opposite Party No. 4) and a son named Sidhanta Narayan Singh Deo (Petitioner). Shivangi (Opposite Party No. 4) was further married to Jay Kumar Jajodia (Opposite Party No. 5). The genealogy of Singh Deo Family is reproduced for better clarity:-

Hitendra Pratap Singhh Deo→Wife – R.R. Laxmi



Unit No. 1, Khata No. 356/29, Plot No. 1, is allotted in favour of Late Hirendra Prasad Singh, father of Opposite Party No. 3 and granted by the State Government. Further, on the said property.

It appears that Late Hirendra Pratap Singh, in respect of his property in the year 1950, the property devolved to his wife. Subsequently, the property devolved to his son i.e. Sourendra Narayan Singhdeo (Opposite Party No.3), two daughters i.e. Sanjukta

appears that Late Hirendra Pratap Singh was the owner of the property in the year 1950. Subsequently, the property devolved to his wife Smt. Soni i.e. Sourendra Narayan Singhdeo (No.-3), two daughters i.e. Sanjukta

5. The dispute in the present case arose in the year 2008 when R.R Laxmi, during her lifetime, executed a sale deed in favor of Jay Kumar Jajodia (Opposite Party No. 5) on 19.12.2008 in respect of her share in the property.

Consequently, the Petitioner approached the Id. Civil Judge, Senior Division, Bhubaneswar with a prayer to quash the sale deed dated 19.12.2008 and to partition the scheduled property amongst the Petitioner and O.P No. 3 & 4. The Id. Civil Judge in Civil Suit No.1255 of 2017 granted a *status quo* order on 01.11.2017. On 24.11.2019, the *status quo* granted under C.S. No.1255 of 2017 was vacated by the Id. Civil Judge, Senior Division, Bhubaneswar.

6. Further, on 20.03.2018, sister of O.P No. 3 i.e. Sanjukta Shah Deo (Opposite Party No.6 herein) also filed a Civil Suit No. 493 of 2018 before the Court of Id. Civil Judge, Senior Division, Bhubaneswar against her brother (i.e.) Sourendra Narayan (O.P No.3), Son-in-law (i.e.) Jay Kumar (O.P. No. 5) & sister (i.e.) Sunita (O.P. No. 7) herein seeking partition of the scheduled property, quashing the sale deed dated 19.12.2008 and restraining Jay Kumar (Opposite Party No. 5) from alienating the disputed property among many other prayers. The Id. Civil Judge vide order dated 29.03.2018 directed the parties to maintain *status quo* which is continuing till date. Admittedly, Bank/secured creditor is not a party to the two civil suits, thus, the interim order would not be binding upon the secured creditor-Bank.

7. The dispute was further aggravated when the said property covered under the sale deed dt. 19.02.2008 was mortgaged by Jay Kumar Jajodia (O.P No.5), who stood as a guarantor to avail a loan for his business named and styled as M/s. Maa Kalika Bhandar from O.P No. 2 i.e. Oriental Bank of Commerce (now, Punjab National Bank). Jay Kumar (O.P No.5) was unable to pay the installments on

time and consequently the present Opposite Party No.1 i.e. Authorized Officer, Oriental Bank of Commerce after initiating recovery process under the SARFAESI Act, 2002 filed an application numbered Bank Misc. Case No. 78 of 2018 under Section 14 of the SARFAESI Act, 2002 before the ld. District Magistrate-cum-Collector-Khurdha for taking physical possession of the mortgaged property. The District Magistrate vide order dated 19.06.2019 directed that *status quo* should be maintained and the case may be decided upon the final judgment in Civil Suit No. 1255 of 2017.

8. The property was auctioned on 12.03.2019 by the Bank on "As is where is basis" and sale deed was executed on 20.03.2019 in favor of Opposite Party No.8 i.e. M/s. MGM Minerals Ltd. Also, the Bank Misc. Case No. 78 of 2018 was disposed of by the District Magistrate-Khordha granting physical possession of the scheduled property to the creditor-Bank i.e. the Opposite Party No.1 herein vide order dated 19.08.2021. The said order was challenged before this Court by writ petition numbered WP(C) No. 26500 of 2021. It is averred that this Court vide order dated 03.09.2021 stayed the operation of the District Magistrate, Khurdha order dated 19.08.2021, which is still in operation.

9. Aggrieved by the sale of the scheduled/mortgaged property, the Petitioner approached the DRT to challenge the sale deed dated 20.03.2019, to quash the entire securitization process and to seek other related remedies. The DRT vide order numbered S.A. No. 41 of 2019 dated

14.09.2021 granted conditional stay of the order dated 19.08.2021 passed by the District Magistrate-Khordha. The DRT vide the same order also directed the Petitioner herein to deposit 15% of the notice amount with the Opposite Party-Bank within 15 days and another 15% of the amount within 15 days thereafter, failing which the stay operation would be vacated. It is, however, not understandable as to the need of petitioner to press for stay of the order dt. 19.08.2021 passed by District Magistrate in the face of interim order passed by this Court in WP(C) No.26500 of 2021.

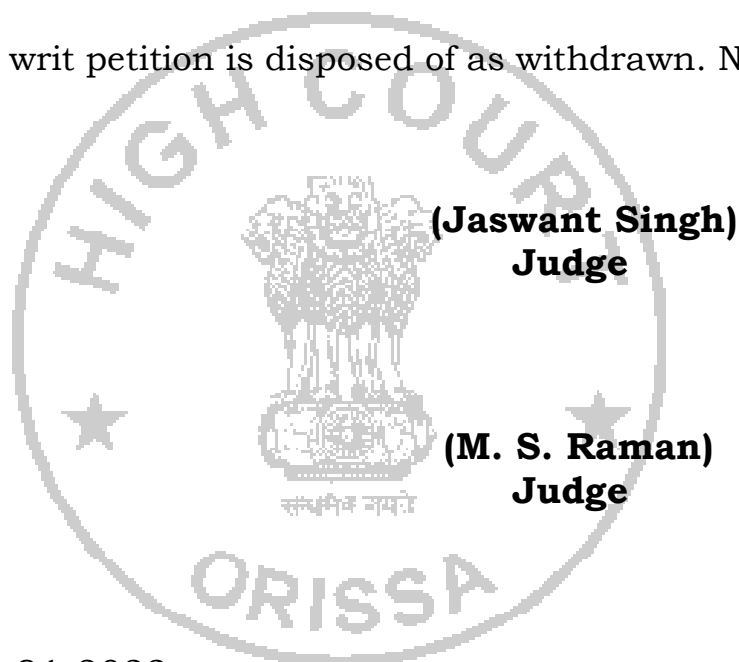
The Petitioner moved an application dated 03.10.2021 vide Diary No.1070 of 2021 before the same forum seeking modification of the order dated 14.09.2021 to the extent that he may be relieved from repaying the amount to Opposite Party No.2-Bank. Since, no Presiding Officers were present in DRT, Cuttack the Petitioner withdrew the said application and moved before us seeking to quash the order dated 14.09.2021 passed by DRT whereby he was asked to pay 30% of the notice amount and also to avail a stay upon the order dated 19.08.2021 passed by the Id. District Judge-cum-Collector, Khurdha in Bank Case No. 78 of 2018 under Section 14 of the SARFAESI Act, 2002 directing for providing of official assistance in taking physical possession of the sold-secured asset in favor of Auction-Purchaser (O.P. No.-8).

10. At the time of hearing, in the light of the fact that the Member of the DRT, Cuttack has been appointed, the Petitioner requested to withdraw this petition and move a

fresh application for modification of the impugned order dt. 14.09.2021 before the concerned DRT. The Bank has raised no objection to the above request of the Petitioner.

11. In view of the above agreed stand, we accept the request of the Petitioner and allow him to seek his remedy before the DRT, Cuttack. Further, we observe that anything recorded in the interim order dt. 24.02.2022 would have no binding effect on DRT concerned, who shall be free to proceed and decide in accordance with law.

12. The writ petition is disposed of as withdrawn. No costs.



March 9th 2022
Cuttack

AKPradhan