

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1275 of 2022

Durga Charan Champati ***Petitioner***
Mr. Bibekananda Bhuyan, Advocate
-versus-
Urmila Pradhan and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
20.12.2022

Order No.

CMP No. 1209 and 1275 of 2022

1. 1. This matter is taken up through Hybrid mode.
2. 2. Petitioner in these two CMPs seeks to assail a composite order dated 2nd September, 2022 (Annexure-5) passed by learned Senior Civil Judge (LR), Bhubaneswar in CS No.10 of 2014 (CS No.2306 of 2018), whereby petitions under Order 1 Rule 10(2) CPC and Order 6 Rule 17 CPC have been allowed.
3. 3. Mr. Bhuyan, learned counsel submits that Defendant No.1 is the Petitioner in both the CMPs. The suit has been filed for partition and for declaration that compromise decree in TS No.101 of 1996 is void and not binding on the Plaintiff. During pendency of the suit, a petition for amendment of the plaint and another petition under Order 1 Rule 10 CPC were filed to implead the Punjab National Bank and purchasers as parties to the suit. Both the petitions were allowed vide common order dated 2nd September, 2022.
- 3.1 3.1 Mr. Bhuyan, learned counsel further submits that by virtue of amendment and impleading Punjab National Bank as party to the suit, the Plaintiff seeks to challenge the mortgage

made by the donee, namely, Sibadutta Champati in favour of the Punjab National Bank. The same is hit by Section 34 of the SARFAESI Act. Hence, prayer either to implead Punjab National Bank as a party or pleading challenging such mortgage deed, could not have been incorporated in the plaint. It is his submission that out of several gift deeds one gift deed was executed prior to filing of the suit, i.e., in the year 2013. Thus, the claim of the Plaintiff by virtue of amendment with regard to validity of the gift deed is barred by limitation. These material aspects were lost sight of by the learned trial Court while adjudicating both the applications. Hence, he prays for setting aside the composite order dated 2nd September, 2022.

4. Considering the submission made by learned counsel for the Petitioner, it transpires that the Plaintiff/Opposite Party has not sought for any relief to declare the mortgage in favour of Punjab National Bank to be null and void. He only wanted to bring certain events on record. Of course, out of several gift deeds one was executed prior to filing of the suit, i.e., in the year 2013. That by itself cannot be a ground to deny the amendment sought for. Since the Petitioner either by virtue of amendment or by impletion of parties, does not claim any relief with regard to validity of the mortgage deed executed by Sibadutta Champati, the provisions of Section 34 of the SARFAESI Act is not applicable to the case at hand. Since the Petitioner wants to bring certain events to the notice of the learned trial Court for proper adjudication of the case and wants to implead the purchasers and mortgagee as parties for better adjudication of the suit, learned trial Court has committed no error in impleading them as parties to the case in view of the

ratio decided in ***Rahul S. Shah Vs. Jinendra Kumar Gandhi and others***, reported in (2021) 6 SCC 418 and also by allowing amendment as prayed for. Thus, I find no infirmity in the impugned order.

5. Accordingly, both the CMPs being devoid of any merit, stand dismissed.

(K.R. Mohapatra)
Judge

s.s.satapathy

