

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.137 of 2023

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Gaurav Mohan Son of Indra Mohan Prasad, Resident of Village - Mohanpur,
P.O. - Mohanpur via Kashipur, P.S. - Moffassil, District - Samastipur.

... .. Petitioner

Versus

1. Krishnadeo Prasad @ Mangal Prasad Son of Late Ramcharitra Prasad,
Resident of Village - Mohanpur, P.O. - Mohanpur via Kashipur, P.S. -
Moffassil, District - Samastipur.
2. Geeta Devi, Wife of Late Chandra Kishore Prasad, Resident of Village -
Mohanpur, P.O. - Mohanpur via Kashipur, P.S. - Moffassil, District -
Samastipur.
3. Babloo Kumar Son of Late Chandra Kishore Prasad, Resident of Village -
Mohanpur, P.O. - Mohanpur via Kashipur, P.S. - Moffassil, District -
Samastipur.
4. Pankaj Kumar, Son of Late Chandra Kishore Prasad, Resident of Village -
Mohanpur, P.O. - Mohanpur via Kashipur, P.S. - Moffassil, District -
Samastipur.
5. Gaytri Devi, Wife of Suresh Prasad, Resident of Village - Mohanpur, P.O. -
Mohanpur via Kashipur, P.S. - Moffassil, District - Samastipur.
6. Ranveer Kumar, Son of Ram Swaroop Prasad, Resident of Village -
Rahmatpur, P.S. - Moffassil, District - Samastipur.
7. The Chief Manager cum Authorised Officer, Bank or Baroda, Main Branch,
Samastipur.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Ranjan, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, Advocate
		Mr. Nishi Nath Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 30-10-2024

Heard learned counsel for the petitioner as well as
learned counsel for the respondent no.7 and I intend to dispose of
the present petition at the stage of admission itself.

02. The present civil miscellaneous petition has been
filed under Article 227 of the Constitution of India by the
petitioner against the order dated 20.04.2022 passed by the



learned Sub Judge-III, Samastipur in Title Suit No. 128 of 2016, whereby and whereunder the learned trial court dismissed the petition of the petitioner filed under Order-I Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code').

03. Learned counsel for the petitioner submits that the petitioner has filed the Title Suit No. 128 of 2016 for declaration of his title and interest over the suit land as mentioned in Schedule-1 of the plaint. The plaintiff has also sought declaration against three sale deeds dated 01.06.2007, 07.06.2007 and 03.05.2007, executed by the respondent 1st party in favour of the respondent 2nd party, to be null and void, illegal, inoperative and not binding upon the petitioner. The suit property is the ancestral property of the petitioner and a partition has taken place in the family vide Partition Suit No. 219 of 1940. The ancestor of respondent 1st party had no title and interest in the suit property. The petitioner came to know about execution of the sale deeds by the respondent 1st party in favour of respondent 2nd party on first week of March, 2016. The defendants-respondents appeared and filed their written statement. Subsequently, respondent- 2nd party has also filed Title Suit No. 51 of 2018 before the learned Civil Judge, Sr. Division, for declaration of title over the same suit property. Subsequently, both the suits were amalgamated.



Learned counsel further submits that though the written statement was filed by the respondent 2nd party but he did not disclose about the loan taken from the Bank of Baroda on the basis of three sale deeds dated 01.06.2007, 07.06.2007 and 03.05.2007. Thereafter, a notice was issued under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 against the respondent- 2nd party and the notice was pasted on the house standing over Survey Plot Nos. 1652 and 1648 which is in the possession of the petitioner. Thereafter, the Bank authority proceeded for attachment of the property under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) and due to happening of these events, the petitioner moved an application to implead the Chief Manager-cum-Authorized Officer, Bank of Baroda, Main Branch-Samastipur as defendant in the suit after the loan was advanced to respondent-2nd party, the Bank has developed interest in the property and it is an admitted fact. On this ground, the application for impleadment has been filed under Order 1 Rule 10(2) of the Code by the petitioner. Learned counsel further submits that respondent -2nd party filed its rejoinder opposing the application filed for impleadment. The learned trial court vide order dated 20.04.2022 dismissed the application for impleadment, which has been challenged before this Court in the



present civil miscellaneous petition.

Learned counsel further submits that the impugned order has been passed without consideration of the facts of the case as well as law applicable on it. The petitioner wants to implead the Bank, which has extended loan to respondent-2nd party, as party and has interest in the suit property since these properties have been kept as collateral for extending the loan and on adjudication of title and declaration of sale deeds as void, the interest of Bank could be affected. But the learned trial court did not consider this fact. Learned counsel further submits that it is the settled law that any person having a semblance of interest could be added as party in the suit. This fact has also been overlooked by the learned trial court. Hence, the impugned order is not sustainable and the same needs to be set aside.

04. Learned counsel appearing on behalf of respondent no.7, the Chief Manager-cum-Authorized Officer, Bank of Baroda, vehemently contends that there is no infirmity in the impugned order and the same has been passed considering the facts and circumstances of the case. Learned counsel further submits that the Bank is neither a necessary nor a proper party in the suit of the plaintiff. The Bank has taken recourse to the provision of SARFAESI Act for realization of its debt against the suit property since the same was kept as security by the



respondent 2nd party for the loan taken way back in the year 2009 and the same cannot be the subject matter of the present suit. Learned counsel further submits that if the plaintiff/petitioner is aggrieved by the proceeding taking place under the SARFAESI Act, he can intervene in the matter under Section 17 of the SARFAESI Act to safeguard his right and interest but by no stretch of imagination, the Bank could be said to be a necessary or proper party in the present matter because the interest of the Bank cannot be adjudicated in the present case.

05. I have given my thoughtful consideration to the rival submission of the parties and perused the case record.

06. The law is settled on the point that when a proceeding under SARFAESI Act has been taking place, Section 34 of the said Act bars the jurisdiction of the Civil Court. The interest of the Bank is only to the extent of safeguarding the loan which has been granted to the respondent -2nd party and for the same, proceeding under the SARFAESI Act has already been initiated. On the other hand, the plaintiff/petitioner have sought declaration of title and interest over the suit property as well as further declaration regarding three sale deeds to be null and void. The Bank has no role to play in the present suit since it has no interest whether the title is declared in favour of the plaintiff or the respondents. Further, the Bank has already taken recourse to



secure its loan. If the plaintiff/petitioner is aggrieved, he can certainly intervene in the matter before the DRT (Debt Recovery Tribunal) /DRAT (Debt Recovery Appellate Tribunal) but it cannot be the other way round. The plaintiff/petitioner wants to implead the Bank so as to overcome the proceeding started by the Bank under SARFAESI Act, which cannot be permitted. It is trite to say that what cannot done directly, cannot be done indirectly.

07. In the aforesaid facts and circumstances, I do not find any infirmity in the impugned order dated 20.04.2022 which does not suffer from any error of jurisdiction. Hence, the impugned order dated 20.04.2022 is hereby affirmed.

08. As a result, the present petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.11.2024
Transmission Date	NA

