ORDER SHEET

APOT/122/2025
WITH
CS/63/2024
IA NO: GA/1/2025, GA/2/2025

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

SOHANLAL MISHRA AND ANR.
VS
CALCUTTA COMMERCIAL BANK (LTD) (IN LIQN) AND ANR.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE RAI CHATTOPADHYAY
Date : 9th July, 2025.

Appearance:
Mr.Shyamal Chakraborty, Sr. Adv.
Mr. Palash Goswami, Adv.
..for the appellants/intervenors

Ms. Nilanjana Adhya, Adv.
...for the intervenor

Mr. Anirban Bose, Adv.
Mr. Subhadeep Sen, Adv.
Mr. Jaydeep Dhar, Adv.
...for OPs 2

Ms. Benazir Kazi, Adv.
Ms. Atmaja Bandyopadhyay, Adv.
...for the Court Liquidator.

Dictated by Arijit Banerjee, J.

Re: GA/1/2025

The Court: This is an application for leave to prefer an appeal against a judgment and order dated April 3, 2025 whereby the appellants' intervention application was dismissed by a learned Judge of this Court.

Having heard Mr. Chakraborty, learned counsel representing the intending appellants, we allow this application.

Accordingly, GA/1/2025 is disposed of.

Re: APOT/122/2025, IA No. GA/2/2025

This appeal is directed against a judgment and order dated April 3, 2025 passed by a learned Judge in IA NO. GA/1/2023 filed in CS/63/2024 (originally registered as CS No.1296 of 1950). The application on which the impugned order was passed was filed by the present appellants who claimed an interest in a property situated at Deoghar, Jharkhand.

The brief facts of the case insofar as the same are presently relevant are that one Bikram Singh Nahar owned various properties in and outside Calcutta including the concerned property at Deoghar. He obtained loan from Calcutta Commercial Bank Limited by mortgaging the said property. He could not repay the loan. The bank subsequently went into liquidation. The Court Liquidator filed a suit being CS No. 1296 of 1950 for recovering the loan amount. That suit was decreed on February 26, 1952, for a sum of Rs.3,05,619.11. It appears that such decretal amount still remains unpaid and has now become a huge sum in excess of Rs.5 crore, taking into account the interest.

The present appellants approached the learned Single Judge with an intervention application saying that they have entered into an agreement for purchase of a part of the property in question from one Samar Singh Nahar being the elder son of the original owner, Bikram Singh Nahar (since deceased). As a matter of fact, Samar Singh Nahar is also no more. The appellants have filed a suit in the Deoghar Court for specific performance of their agreement with Samar Singh Nahar. That suit is still pending.

The contention of the appellants before us is that the learned Judge should have allowed them to intervene in this matter. They have paid substantial sums of money to Samar Singh Nahar. They hold a registered agreement for purchase of a part of the property in question. They should be allowed to pay off the decretal dues to the decree-holder so that the property becomes free from mortgage. The learned Judge erred by not allowing the appellants to intervene.

Mr. Chakraborty, learned Senior Counsel representing the appellants, says that the appellants have a right under Section 57 of the Transfer of Property Act, 1882 to redeem the property in question. The defendant in the suit, Pradip Singh Nahar, being the other son of Bikram Singh Nahar, cannot suffer any prejudice if the appellants are allowed to participate in the suit. If the property is allowed to be sold in execution of the decree, the appellants' suit for specific performance pending in the Deoghar Court will become infructuous.

We have also heard Mr. Anirban Bose, learned Advocate appearing for Pradip Singh Nahar. He points out that a purported agreement was entered into by the present appellants with Samar Singh Nahar for purchase of a part of the property in question which is admittedly a joint property belonging to Samar and Pradip. The consideration amount mentioned in the agreement is Rs.20 lakh. Rs.5.5 lakh only has been paid by the appellants to Samar. Samar had no right to enter into such agreement to sell a joint property. Obviously, the appellants are trying to grab a valuable property at gross under-value.

Mr. Chakraborty points out that the agreement with Samar pertains to 65 acres out of total 446 acres. However, he fairly admits that the property is not divided by metes and bounds and the 65 acres is not identifiable.

Ms. Adhya, learned Advocate appears virtually and says that her client is trying to intervene in this proceeding. Her client is interested in purchasing the property in question and offered a price of Rs.13 crore. She further points out that on an application of the plaintiff, Official Receiver has been appointed over the property in question and he is in symbolic possession of the property.

Learned Single Judge referred to Section 59A captioned "References to mortgagors and mortgagees to include persons deriving title from them" and Section 60 captioned "Right of mortgagor to redeem", of the Transfer of Property Act, 1882, and held that on a conjoint reading of these two sections it appears that the mortgagor and mortgagee include their legal heirs and successors. The petitioners before the learned Judge are not legal heirs of the original mortgagor.

Referring to the agreement of sale relied upon by the appellants / petitioners, learned Single Judge observed as follows:-

> *"**Firstly**, an agreement for sale, under Section 54 of the Transfer of Property Act, 1882 does not create any interest or charge on the property. **Secondly**, the said agreement for sale was executed by one of the co-owners in respect of the whole property without concurrence of the other co-owners. That agreement itself did not create any right of redemption or create any equity of redemption in*

favour of the present Petitioners, in preference to the right of redemption of the legal heirs of the original mortgager. ***Thirdly***, *although argued that the Petitioner is ready and willing to pay the mortgaged money, there is no pleading in the application expressing the intention of the Petitioner to pay mortgaged money. It is rather an application which contains a prayer that,*

a) an order be made that on payment of the amount being due to the Plaintiff out of the above mortgage, the properties under the said deed of mortgage shall be declared as released and mortgage is redeemed in respect of the properties covered under the said deed of mortgage dated 12th December, 1944 made in between the Plaintiff Bank and Bikram Singh Nahar;

b) an order be made that on payment of the amount assessed as due to the Plaintiff decree passed in Suit No. 1296 of 1950 shall be declared as satisfied;

c) A declaration be made that the Plaintiff Bank has no due against Bikram Singh Nahar or his legal heirs which arose out of the loan transaction in between the Plaintiff Bank and Bikram Singh Nahar in respect of which the Deed of Mortgage was made on 12/12/1944 in favour of the Plaintiff Bank which was registered as Deed No. 4353 for the years 1944 and which was registered before the Registrar of Assurance, R.A., Calcutta.

Section 60 of the Transfer of Property Act, 1882 which provides confers the right of redemption is very specific on its applicability. For redemption of mortgage, it is obligatory for the mortgagor to pay the mortgaged money or tender the same at a proper time and place. This section makes it clear that redemption is subject to payment of mortgaged money. The present Petitioners showed no iota of interest to pay the mortgaged money. If they are allowed to redeem the mortgage in terms of prayers made in the application, the very object of the aforesaid provision shall be defeated.

For reasons aforesaid and in view of the discussions made above, it is conclusion that the present Petitioners have no locus standi to intervene in the suit, nor they have any ostensible interest.

> *Therefore, the instant application is not tenable and is dismissed hereby."*

We have gone through the impugned judgment and order. The Learned Single Judge has rightly come to the conclusion that the appellants have no *locus standi* to intervene in the present proceedings. All that the appellants hold is an agreement with one of the co-owners of the property in question. Such agreement does not create any interest in land. They have filed a suit for specific performance of such agreement. What the fate of that suit will be, only time will tell. The appellants are surely entitled to pursue that remedy.

We do not see any reason to permit the appellants to intervene in the present proceedings. In the event the property, which is under mortgage, is put up for sale in execution of the decree that has been passed in favour of the bank which is in liquidation now, it will be open to the appellants to participate in such auction. *Prima facie*, we are of the view that the property is a very valuable one. It will be in the interest of justice that the best price for the property is obtained and the same is not allowed to be sold to anybody at a price that will shock the conscience of the Court.

In view of the aforesaid, this appeal along with the connected application being GA/2/2025 stand dismissed.

(ARIJIT BANERJEE, J.)

(RAI CHATTOPADHYAY, J.)

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