BEFORE THE DEBTS RECOVERY TRIBUNAL, CUTTACK
PRESENT:- SHRI JITENDRA PRASAD SINGH
PRESIDING OFFICER.

S.A. No.170 OF 2025

DATE OF DELIVERY OF ORDER: 05.08.2026

1. Nityaranjan Nayak, aged about 37 years, S/o Sarat Chandra Nayak, At-Village-Manitiri, PO-Barabati, Dist.Jajpur, Odisha

2. Jyostna Nayak, aged about 40 years, D/o Sarat Chandra Nayak, At-Village-Manitiri, PO-Barabati, PS-Dharmasala, Dist.-Jajpur, Odisha

…… Applicants

-Versus-

1. The Branch Manager, UCO Bank, Barabati Branch, At/PO-Barabati, PS-Dharmasala, Dist.-Jajpur, PIN-755008

2. Authorized Officer, UCO Bank, Barabati Branch, At/PO-Barabati, PS-Dharmasala, Dist.-Jajpur, PIN-755008

3. Sarat Chandra Nayak, aged about 70 years, S/o late Bansidhar Nayak, At-Village-Manitiri, PO-Barabati, Dist.-Jajpur, Odisha, PIN-755026

4. Chitaranjan Nayak, aged about 43 years, S/o Sarat Chandra Nayak, At-Village-Manitiri, PO-Barabati, Dist.-Jajpur, Odisha, PIN-755026

….. Respondents

Counsel for the Applicant:- Shri Kirtan Badhei
Counsel for the Respondent No.1 & 2:- Shri Bhagaban Guin

For the Respondents No.3 to 4:- None

JUDGEMENT

1. This is an Application under Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, filed by the applicants for quashing of the physical possession Notice dated 16.09.2025 issued by the Branch Manager, UCO Bank, Barabati Branch, Respondent No.1 vide Annexure-B and for other reliefs.

2. The brief facts of the applicant case is that the applicants are coparceners of the Joint family property i.e. Khata No.415, Plot No.1539, area Ac0.27 dec., Mouza-Manatiri, Tahasil-Rasulpur, in the district of Jajpur. Such property is the ancestral property of Sarat Chandra Nayak, who is the father of the applicant No.1 and 2. Since the applicants and the Respondents No.3 and 4 are Hindus and are governed under the Mitakshara School of Law, they are all coparceners in respect of the ancestral property of Sarat Chandra Nayak, Respondents No.3, which has been exclusively recorded in his name as per the settlement published in the year 1998. Since settlement record neither creates right nor extinguishes right, both the applicants and the Respondent No.3 and 4 being coparceners have equal share. Respondent No.3 and 4 without the consent and knowledge of the present applicants, mortgaged the above property with Respondent No.1 and 2. Since the present Applicants are neither loanees nor guarantors. Hence they are not liable to make any payment of the loan amount. It is submitted that since the Respondent No.4, with malafide intention, persuaded the Respondent No.3 to avail loan without the consent of the Applicants, the Applicant No.1 filed a Civil Suit for partition in the Court of Civil Judge(Sr. Div.), Jajpur in C.S. No.146/2011 which is still not finalized.

The applicants along with other members of the joint family are residing in the ancestral home built on the said land and that is the only dwelling house of the applicants, wherein they are living from the time of their birth, being their ancestral property.

As the matter stood thus, the Respondent Bank issued a physical possession notice dated 16.09.2025 wherein it was informed that the Bank has taken possession of the said property under the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Respondent Bank issued such possession notice dated 16.09.2025 without giving any notice to the applicants who are the coparceners of the joint family property.

The Respondents No.3 and 4 namely Sarat Chandra Nayak and Chitaranjan Nayak who are the proprietors of M/s Jyostna Traders and Jyosna Motors, have availed the loan back in the year 2006 without the consent and knowledge of the applicants and have mortgaged the only dwelling house of the applicants for their own interests, particularly when the partition dispute was going on between the applicants and the Respondents No.3 and 4. The applicants never gave consent to mortgage such ancestral property and even if the applicants are the coparceners and suit is pending regarding the said land, still the Respondent Bank issued possession notice even if consent was never granted to mortgage such ancestral property.

Respondent Bank does not have any right to take possession of the ancestral joint family property since the Respondent Bank did not obtain consent from the coparceners, particularly the applicants before granting any loan against such property. In the instant case, since the applicants are the co-parceners and the joint owners of the property they cannot be deprived from their property without the authority of law. Hence the physical possession notice vide Annexure-B is violative of Article 300A of the Constitution of India and hence needs to be quashed.

3. Notices were issued to the Respondents No.1 to 4 to show cause as to why the relief prayed for by the applicants be not granted. After receiving the notice, the Respondents No.1 & 2 appeared filed their counter affidavit. Defendants No.3 and 4 neither appeared nor filed any counter.

4. The Respondents No.1 and 2 filed their counter affidavit and contended that in order to secure cash credit facility the guarantor-Respondent No.3 deposited Original ROR of landed property situated in Khata No.415, Plot No.1539, area Ac0.27 dec., Mouza-Mantiri, PS-Dharmasala, Tahasil-Rasulpur, Dist.-Jajpur recorded in his name before the Respondent No.2 Bank. Respondent No.3 while submitting original documents of land to secure the cash credit facility of Rs.10,00,000/- executed letter of undertaking for advance against immovable property on 26/05/2006 respectively.

After availing cash credit facility despite sufficient means to pay borrower did not deposit the interest in ash credit account timey, consequently the account was declared as NPA on 30.09.2011. As a result of which Respondent Bank initiated OA No.491/2012 before the Debts Recovery Tribunal, Odisha, Cuttack seeking recovery of its outstanding dues from the borrower. After hearing the case at length, the Tribunal has been pleased to dispose of the OA No.491/2012 and issued recovery certificate to recover the dues Rs.17,31,663/- with interest @10% p.a. on the amount due w.e.f. 18.12.2012 till realization of dues. As per the Recovery Certificate, the Recovery Officer of the Tribunal initiated recovery proceeding No.205/2019 and issued demand notice to the borrowers as well as guarantor to pay the dues along with interest mentioned in the Recovery Certificate. Inspite of notice to the borrowers or guarantors they did not pay the dues of the bank. As a result of which Recovery Officer directed to take physical possession of the mortgaged property on 25.08.2025. As per direction, the Advocate Commissioner took the possession of the same and executed the order of the Recovery Officer successfully on 26/09/2025 in presence of local administration.

While matter stood thus, in order to recover the outstanding dues Respondent Bank simultaneously proceeded under SARFAESI Act, 2002, consequently demand notice U/s 13(2) of the SARFAESI Act was issued on 28/01/2019 to the borrower/guarantor to pay the outstanding amount plus interest and other expenses thereon. But the borrower/guarantor neither paid the outstanding dues nor sent any reply under Section 13(3) of the SDARFAESI Act. On being defaulted to pay the demanded amount as per demand notice, the Bank issued symbolic possession notice over the secured assets U/s.13(4) of the SARFAESI Act on 03.12.2021. The applicants have not any subsisting right or locus to challenge the physical possession notice dated 16.09.2025, as the secured creditors have proceeded strictly in accordance with law upon a valid, enforceable security interest. A settlement or record that merely evidences past arrangements does not by itself, divest or curtail the rights of the recorded owner, nor does it prevent him or his successors from validly creating encumbrances in favour of 3rd parties in accordance with law.

A revenue or settlement entry neither creates nor extinguishes title, does not by itself, confer coparcenary rights or determine quantum of shares. The applicants are coparceners, their remedy, if any, lies in seeking partition interse and not in invalidating a duly created mortgaged in favour of bonafide secured creditors in the absence of any proved illegality or want of authority mortgage. It is denied that the mortgage executed by Respondent No.3 is invalid merely because the applicants did not sign or expressly consent to it, as Hindu law and judicial precedent recognize the power of a karta or authorized coparcener to mortgage joint property for family necessity or benefit without prior consent of every coparcener. Mere filing or pendency of a civil suit for partition does not invalidate or render void the prior mortgage of the Bank's measures under SARFAESI act, 2002. In any event if the rights declared in such suit will remain subject to the lawful rights already created in favour of the secured creditor.

Respondent No.3 had many other poetries in his name as reflected from ROR Security interest created by Bank is valid as per law and entitled to proceed against the secured assets in the event borrowers are defaulted in repayment. Status of property as residential does not by itself, confer immunity from enforcement under the SARFAESI Act, where a valid security interest has been created.

It is denied that there is any illegality irregularity or procedural defect in taking physical possession. Respondent-Bank affixed property vacation notice on 15.09.2025. Contention of applications that physical possession taken without given notice to the applicants is empathetically denied, as the respondent Bank taken physical possession after due affixation of vacation notice on the mortgaged property Applicants statement are contradictory in itself on the one hand they claim that they are residing in suit land and on the other hand they have no knowledge about affixation of vacation notice.

It is denied that Respondent Nos. 3 and 4 mortgaged the only dwelling house of the applicants for their purely personal interest and without authority in law. A Karta on authorized coparcener of a Hindu undivided family can validly mortgage joint property for legal necessity or benefit of the estate, without obtaining prior consent from every coparcener.

The fact that a partition suit regarding the said land is stated to be in currency does not bar the secured creditor from issuing possession notice or proceeding under the SARFAESI Act so long as the security interest was duly created and the statutory procedure was followed strictly.

As a "settled principle of Law" ancestral joint family property can never be mortgaged without consent of all coparceners is denied as misleading, misconceived in laws and contrary to well-recognized judicial authority affirming the karta's power to sell or mortgage for legal necessity or benefit of estate even without such consent.

Once a valid mortgage is created, the bank is legally entitled to enforce its security under the SARFAESI Act, 2002 default, despite internal disputes among family members.

Both borrower and guarantor arrayed as parties in the Original Application No. 491/2012 (RC No.205/2019) and due notices had been issued to both following Recovery of Debts and Bankruptcy Act, 1993 and ruled made there under.

Applicants contention that separate notice must be given to every Applicants or alleged coparcener misconceived in law, since the statute require notice to the borrower/mortgagor. In the instant application there is no plea taken by applicants for non compliance of provision of section 13 of act (SARFAESI Act, 2002) or the rules made there under, the applicants merely allege absence of a separate notice to them as coparceners. Such a vague plea does not itself made the entire SARFAESI action null, Ground taken by applicants that respondent Bank action is violates Article 300A of the constitution is devoid of merit and not backed by proposition of law, hence entire SA liable to be dismissed with exemplary cost.

Respondent Bank has initiated recovery action strictly in consonance and conformity with SARFAESI Act, 2002 and rules made there under and no breaches or procedural lapse therein on part of Respondent Bank. Hence the Applicants are not entitled to any reliefs or and/or interim reliefs as prayed for.

5. On the perusal of the pleadings of the rival parties, the following issues arise for consideration.

(i) Whether the demand notice under Section 13(2) and possession notice under Section 13(4) of the SARFAESI Act has been served to the applicants or not?

(ii) Whether the mortgaged property is a joint family property having share of the applicants?

(iii) Whether the Respondent Bank has taken physical possession of the property under SARFAESI Act?

(iv) Whether the applicant is entitled to the reliefs as claimed?

6. **Issue No.(i):-** Whether the demand notice under Section 13(2) and possession notice under Section 13(4) of the SARFAESI Act has been served to the applicants or not?

The contention of the applicants is that the applicants were neither given any notice nor made a party in the recovery proceeding initiated before the Debts Recovery Tribunal inspite of being the coparceners of the ancestral joint family property and be in physical possession over the property which is well within the knowledge of the Respondents No.1 and 2.

Respondent Bank filed counter stating that in order to recover the outstanding dues Respondent Bank simultaneously proceeded under SARFAESI Act, 2002, consequently demand notice U/s 13(2) of the SARFAESI Act was issued on 28/01/2019 to the borrower/guarantor to pay the outstanding amount plus interest and other expenses thereon. But the borrower/guarantor neither paid the outstanding dues nor sent any reply under

Section 13(3) of the SARFAESI Act. On being defaulted to pay the demanded amount as per demand notice, the Bank issued symbolic possession notice over the secured assets U/s.13(4) of the SARFAESI Act on 03.12.2021.

From the perusal of the record it is seen that the applicants are claiming that they are the coparceners to the mortgage property and they have share in the property but the Respondent Bank contended that the ROR submitted by the applicant shows that Sarat Nayak is the owner of the property, hence there is no requirement for the Respondent Bank to issue notice to the applicants as they are neither loanees nor guarantors and the applicants have not disputed with regard to the service of notice under Section 13(2) and 13(4) of the SARFAESI Act on the borrower and the guarantors. As such there is no illegality and irregularity committed by the Respondent Bank while issuing notice under Section 13(2) and 13(4) of the SARFAESI Act. As such the contention of the Applicants holds no good. Accordingly **Issue No.(i)** is answered.

7. Issue No.(ii): Whether the mortgaged property is a joint family property having share of the applicants?

The contention of the applicants is that the applicants are coparceners of the Joint family property i.e. Khata No.415, Plot No.1539, area Ac0.27 dec., Mouza-Manatiri, Tahasil-Rasulpur, in the district of Jajpur. Such property is the ancestral property of Sarat Chandra Nayak, who is the father of the applicant No.1 and 2. Since the applicants and the Respondents No.3 and 4 are Hindus and are governed under the Mitakshara School of Law, they are all coparceners in respect of the ancestral property of Sarat Chandra Nayak, Respondents No.3, which has been exclusively recorded in his name as per the settlement published in the year 1998. Since settlement record neither creates right nor extinguishes right, both the applicants and the Respondent No.3 and 4 being coparceners have equal share. Respondent No.3 and 4 without the consent and knowledge of the present applicants, mortgaged the above property with Respondent No.1 and 2.

The contention of the respondents No.1 and 2 that the A revenue or settlement entry neither creates nor extinguishes title, does not by itself, confer coparcenary rights or determine quantum of shares. It is humbly submitted that even assuming without admitting that the applicants are coparceners, their remedy, if any, lies in seeking partition interse and not in invalidating a duly created mortgaged in favour of bonafide secured creditors in the absence of any proved illegality or want of authority mortgage. It is denied that the mortgage executed by Respondent No.3 is invalid merely because the applicants did not sign or expressly consent to it, as Hindu law and judicial precedent recognize the power of a karta or authorized coparcener to mortgage joint property for family necessity or benefit without prior consent of every coparcener. Mere filing or pendency of a civil suit for partition does not invalidate or render void the prior mortgage of the Bank's measures under SARFAESI Act, 2002. In any event if the rights declared in such suit will remain subject to the lawful rights already created in favour of the secured creditor.

From the perusal of the record it is seen that the applicants are claiming as coparceners and as they are having their share in the mortgaged property. They have stated that they have already filed partition suit in this regard claiming their share in the property which is pending but not filed any documentary proof in this regard. From the ROR filed by the applicants shows that Sarat Nayak is the owner of the property. The applicants have not filed any proof to show that they are having the share in the property. Hence the mortgage created by the Respondent No.3 is valid one as at that point of time ROR says that the Respondent No.3 is the recorded owner of the property. Accordingly **issue No.(ii)** is answered.

8. Issue No.(iii):- Whether the Respondent Bank has taken physical possession of the property under SARFAESI Act?

The contention of the applicant is that The applicants along with other members of the joint family are residing in the ancestral home built on the said land and that is the only dwelling house of the applicants, wherein they are living from the time of their birth, being their ancestral property.

As the matter stood thus, the Respondent Bank issued a physical possession notice dated 16.09.2025 wherein it was informed that the Bank has taken possession of the said property under the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Respondent Bank issued such possession notice dated 16.09.2025 without giving any notice to the applicants who are the coparceners of the joint family property.

The contention of the Respondent Bank is that the Respondent Bank affixed property vacation notice on 15.09.2025. Contention of the applicants that physical possession taken without given notice to the applicants is emphatically denied, as the respondent bank taken physical possession after due affixation of vacation notice on the mortgaged property. Applicant statements are contradictory in itself on the one hand they claim that they are residing in suit land and on the other hand they have no knowledge about affixation of vacation notice.

Further contention of the applicant is that after availing cash credit facility despite sufficient means to pay borrower did not deposit the interest in cash credit account timey, consequently the account was declared as NPA on 30.09.2011. As a result of which Respondent Bank initiated OA No.491/2012 before the Debts Recovery Tribunal, Odisha, Cuttack seeking recovery of its outstanding dues from the borrower. After hearing the case at length, the Tribunal has been pleased to dispose of the OA No.491/2012 and issued recovery certificate to recover the dues Rs.17,31,663/- with interest @10% p.a. on the amount due w.e.f. 18.12.2012 till realization of dues. As per the Recovery Certificate, the Recovery Officer of the Tribunal initiated recovery proceeding No.205/2019 and issued demand notice to the borrowers as well as guarantor to pay the dues along with interest mentioned in the Recovery Certificate. Inspite of notice to the borrowers or guarantors they did not pay the dues of the bank. As a result of which Recovery Officer directed to take physical possession of the mortgaged property on 08.08.2025. As per direction the Advocate Commission took the possession of the mortgaged property and executed the order of the Recovery Officer successfully on 16.09.2025 in presence of local administration.

From the perusal of the record it is evident that the Respondent Bank has taken physical possession of the property pursuant to the order of the Recovery Officer successfully on 16.09.2025 in presence of local administration. Respondent Bank filed memo on dated 28/07/2026 at the time of arguments along with the orders of the Recovery Officer and the letter of the Bank dated 28.07.2026 issued to the Counsel for the Respondent Bank Shri Bhagaban Guin. From the aforesaid documents it transpires that the Advocate Commissioner appointed by the Recovery Officer of this Tribunal in R.C. No.205/2019 while executing the judgment passed in OA No.491/2012 has taken possession of the property on 16.09.2029 pursuant to the order of the Recovery Officer and the physical possession notice dated 16.09.2025 is not the notice under SARFAESI Act as is evident from the order of the Recovery Officer dated 08.08.2025 and the letter addressed to the Counsel for the Respondent Bank also further clarifies that the physical notice written in English under the SARFAESI Act was affixed inadvertently and the physical notice in Odia has been properly affixed under the RDDB Act, 1993 in compliance with the order of Hon'ble DRT passed in the OA. Hence the applicants contention that the Respondent Bank has taken physical possession of the property on dated 16.09.2025 under SARFAESI Act is not correct rather it is taken only under RDDB & FI Act, 1993 pursuant to order of the Recovery Officer. Hence the said notice is not challengeable in SA under Section 17(1) of the SARFAESI Act. The applicants could have preferred appeal under Section 30 before this Tribunal. As such the said contention of the applicants hold no good. Accordingly issue No.(iii) is answered.

9. **Issue No.(iv)**:- Whether the applicant is entitled to the reliefs as claimed?

From the perusal of the record it is seen that after availing the credit facilities from the bank, the Respondent No.3 and 4 did not adhere to the terms and conditions of the sanction and did not clear the amount despite several correspondences and request from the bank for which the said loan accounts of the borrower became NPA. Thereafter the Respondent Bank had initiated the actions against the borrower and the guarantors under the provisions of the SARFAESI Act. No irregularity has been committed by the Respondent Bank while initiating action under the SARFAESI Act. Applicants have also failed to point out any irregularity committed by the Respondent Bank while initiating action under SARFAESI Act only prayed for quashing of the possession notice dated 16/09/2025 which is under the RDDB & FI Act not under SARFAESI Act which is evident from record of R.C. No.205/2019 and the letter dated 28.07.2026 issued to the Counsel for the Bank.

In view of the aforesaid discussion made above, and the issues already answered in the preceding paragraphs and considering the facts and circumstances of the case and the material available on record, this Tribunal is of the view that the applicants have failed to prove its case and the Respondent Bank has established its defence. Accordingly, the instant SA bearing SA No.170/2025 is hereby dismissed being devoid of any merit. Accordingly Issue No.(iv) is answered.

O R D E R

In the result, S.A. No.170 of 2025 is hereby dismissed being devoid of any merit and not maintainable under law. Applicants are at liberty to take appropriate steps as per law against the physical possession taken on dated 16.09.2025 as per the order of the Recovery Officer on dated 08.08.2025 in R.C. No.205/2019 arising out of OA No.491/2012.

Since the main SA is disposed of, hence all the IAs, pending, if any, stands disposed of and interim order, if any, stands vacated.

Let a copy of this order be supplied to the parties forthwith as per rules.

Let the file of SA No.170 of 2025 be consigned to the record room.

This order is dictated and corrected by me and pronounced in the open Court under my signature, this the 5th day of August, 2026.

(Jitendra Prasad Singh)
Presiding Officer.