


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil First Appeal No. 1651/2025

Yogendra Singh Son of Late Shri Bhanwar Singh, Occupation Advocate, Resident of Plot No. AC-4, Gayatri Sadan, Sawai Jaisingh Highway, Banipark, Jaipur.

----Plaintiff-Appellant

Versus

1. Baid Finserv Limited, Through Managing Director/Authorized Officer, office of Baid House, Second Floor, 1, Taranagar Ajmer Road, Jaipur.
2. Shri Devendra Singh Son of Late Shri Bhanwar Singh, Resident of Plot No. AC-4, Gayatri Sadan, Sawai Jaisingh Highway, Banipark, Jaipur.
3. Smt. Renu Rathor Wife of Shri Devendra Singh Adult, Resident of Plot No. AC-4, Gayatri Sadan, Sawai Jaisingh Highway, Banipark, Jaipur.
4. Shri Bhawani Singh Son of Late Bhanwar Singh Adult, Resident of Plot No. AC-4, Gayatri Sadan, Sawai Jaisingh Highway, Banipark, Jaipur.
5. Smt. Anurag Jhala D/o Late Smt. Prem Kanwar, Wife of Shri Manvendra Singh, Adult, Resident of D-172, Ram Marg, Hanuman Nagar, D Block Vaishali Nagar, Jaipur.
6. Manisha Jhala D/o Late Smt. Prem Kanwar, Wife of Shri Shailendra Singh, Adult, Resident of Khandwa Haveli, Ambabari, Infront of Bhawani Niketan, Jaipur.
7. Smt. Gopal Kanwar Wife of Shri Vaidpal Singh, Adult, Resident of Flat No. 305, Sector-5, Mansa Devi, Complex, Panchkula, Chandigarh.
8. Smt. Pritam Kanwar Wife of Shri Sawai Singh Bhati, Resident of D-172, Kewat Marg, Hanuman Marg, D Block Vaishali Nagar, Jaipur.

----Defendants/Respondents

For Appellant(s) : Mr. M.M. Ranjan, Sr. Adv. assisted by
Mr. Rohan Agrawal, Adv.
Mr. Yashvardhan Tolani, Adv.
Mr. Naman Pareek, Adv.
Mr. Lokesh Tiwari, Adv.
Mr. Aman Pareek, Adv. &

Mr. Yashvardhan Tolani, Adv.
For Respondent(s) : Mr. R.K. Agarwal, Sr. Adv. assisted by
Mrs. Sunita Pareek, Adv.,
Mr. Adhiraj Modi, Adv. &
Mr. Shubham Sharma, Adv.
Mr. Sandeep Bansiwala, Adv.
Mr. O.P. Mishra, Adv.
Mr. Madho Prapan Swami, Adv.

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Judgment

Date of Arguments Concluded : **20/04/2026**
Date of Judgment Reserved : **20/04/2026**
Full/Operative Part Uploaded : **Full**
Date of Judgment Pronounced : **22/05/2026**

1. The present civil first appeal has been filed against the order dated 14.08.2025 passed by learned Additional District Judge No.6, Jaipur Metropolitan-II (hereinafter referred to as learned 'trial Court') in Civil Suit No.55/2025, whereby, the plaint filed by the appellant for partition, declaration and permanent injunction has been rejected on an application filed on behalf of the defendant-respondent No.1 under Order VII Rule 11 read with Section 151 CPC, on the ground that it was barred by the law as per provisions of Sections 34, 35, 13(2), 13(4) and 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'Act of 2002').

2. The plaintiff-appellant sought the following reliefs in the suit filed by him:-

"20. यह कि अनुतोष निम्न प्रकार है :-

1. कि वह विवादित सम्पत्ति एसी 4 गायत्री सदन, सवाई जयसिंह हाईवे बनीपार्क जयपुर का विभाजन

जरिये मीटस एण्ड बाउण्ड्स से कराकर अपना 1/3 हिस्सा प्राप्त कर ले व उसका कब्जा प्राप्त कर ले।

2. कि प्रतिवादी संख्या-1 ने सम्पत्ति स्थित ए.सी 4 गायत्री सदन, सवाई जयसिंह हाईवे बनीपार्क जयपुर का साम्युक्त बंधक किया है उसको व मुकाबले वादी अवैध, शून्य एवं वाईड घोषित करार दिया जावे।

3. कि प्रतिवादी संख्या-1 को बजरिये स्थायी निषेधाज्ञा द्वारा पाबन्द फरमा दें कि प्रतिवादी संख्या-1 नोटिस अन्तर्गत धारा-13(2) धारा-13(4) सरफेसी एक्ट के तहत ना तो सम्पत्ति का कब्जा ले, ना सम्पत्ति को निलाम करे, ना वादी के शांति पूर्वक उपयोग उपभोग में बाधा डाले एवं स्थिति यथावत रखे।

4. कि अन्य कोई अनुतोष जो माननीय न्यायालय बहक वादी विरुद्ध प्रतिवादी संख्या-1 उचित समझते अता फरमाई जावे।"

3. Brief facts of the case as averred in the plaint are that the Plot No.AC-4, Gayatri Sadan, Sawai Jaisingh Highway, Banipark, Jaipur was purchased in the name of Smt. Ratan Kanwar wife of Late Shri Bhanwar Singh on 30.06.1959 out of Hindu Undivided Family Funds. Therefore, the property in question is Joint Hindu Undivided Family property. It has also been averred in the plaint that on 01.10.1979, an oral partition was made which was reduced into writing on 24.11.1979 and the property was partitioned amongst Smt. Ratan Kanwar, Yogendra Singh, Devendra Singh, Bhanwar Singh and Bhawani Singh. It has further been averred in the plaint that this family settlement was acted upon and was relied upon by the Rajasthan Land and Building Tax Department to exempt the plot from Land and Building tax, acknowledging its partition amongst the five members of HUF, an order dated 28.07.1984 was passed in this regard. Furthermore,

plaintiff-appellant's mother Smt. Ratan Kanwar borrowed a loan from respondent No.1 and thereupon, respondents No.2 and 3 stood as co-borrowers, by creating an equitable mortgage and deposited the title documents of the property in question, which are in the name of plaintiff-appellant's mother Smt. Ratan Kanwar. Smt. Ratan Kanwar has died on 29.11.2024. When installments of loan were not paid, notice under Section 13(2) of the Act of 2002 was issued by respondent No.1. At this stage, the plaintiff-appellant filed the Civil Suit No.55/2025 and made a prayer for partition of the property in question by way of metes and bounds, and also to declare the equitable mortgage of property in question created by plaintiff-appellant's mother in favour of respondent No.1-Bank, as null and void qua the share of plaintiff-appellant and further to restrain the respondent No.1, from taking possession of the property in question and also, restraining respondent No.1 from interfering in the peaceful possession of the suit property.

4. After filing of the suit, the respondent No.1-Baid Finserv Ltd. (hereinafter referred to as respondent No.1) moved an application under Order VII Rule 11 read with Section 151 CPC and Sections 34, 35, 13(2), 13(4) and 17(1) of the Act of 2002 mentioning interalia therein that the suit has been filed by the plaintiff-appellant in collusion with the respondent Nos.2 to 8 just to defeat the recovery of Loan given by the respondent No.1. It was also mentioned in the said application that the deceased-Smt. Ratan Kanwar and the defendant-respondent Nos.2 and 3 (hereinafter referred to as the 'borrowers') borrowed a loan of Rs.1,40,00,000/- on 05.01.2018 from the respondent No.1 by

depositing title deeds of the disputed property and creating an equitable mortgage in favour of the respondent No.1. The borrowers failed to repay the loan, therefore, on 26.07.2019, the loan account was declared as Non-Performing Asset and a notice under Section 13(2) of the Act of 2002 dated 20.07.2024 for outstanding loan of Rs.2,89,31,796/- was issued to the borrowers. Thereafter, the borrowers submitted the reply against the notice, which was disposed of by the respondent No.1 on 10.08.2024 and initiated proceedings against the disputed mortgaged property. As proceedings under various sections of the Act of 2002 against the disputed mortgaged property have been initiated, therefore, it was stated in the said application that as per the provisions of Sections as 34, 35, 13(2), 13(4) and 17(1) of the Act of 2002, Civil Court has no jurisdiction to try the suit. Hence, it was prayed that the plaint filed by the plaintiff-appellant be rejected for want of jurisdiction. Further, it has also been mentioned in the application that as per Section 34 of the Act of 2002, only Debt Recovery Tribunal/Debt Recovery Appellate Tribunal is empowered to decide any matter relating thereto. Hence, the prayer was made that the plaint be rejected.

5. The plaintiff-appellant filed the reply to the said application and submitted that the civil suit was filed by the plaintiff-appellant for getting the property partitioned by way of metes and bounds and to get his share and also, to declare the mortgage of disputed property, null and void qua the share of plaintiff-appellant and further to grant permanent injunction against the respondents i.e. not to take the possession of the disputed property which is in the ownership and possession of the plaintiff-appellant. It was also

mentioned in the reply that it is only the Civil Court which has the jurisdiction to grant the relief of partition and also, to declare the equitable mortgage created on such property as null and void and no such relief can be granted by DRT/DRAT. Therefore, the suit cannot be said to be barred by the provisions of the Act of 2002, hence, it was prayed that the application under Order VII Rule 11 of CPC moved on behalf of respondent No.1 be dismissed. Learned trial Court after hearing both the parties, vide impugned order dated 14.08.2025, while relying upon the judgment passed by the Hon'ble Apex Court in the case of **Jagdish Singh Vs. Heeralal & Ors.** reported in **AIR 2014 SC 371** allowed the said application filed by the respondent no.1 and rejected the plaint of the plaintiff-appellant holding the suit as barred by law. Hence, the present appeal.

6. Learned Senior Counsel for the plaintiff-appellant submits that the property in question was purchased in the name of Smt. Ratan Kanwar by using the Hindu Undivided Family funds, therefore, the plaintiff-appellant and the respondents (except respondent No.1) have their vested rights in the disputed property. Learned Senior Counsel further submits that on 01.10.1979, the property was orally partitioned and the said partition was reduced into writing on 24.11.1979. Thereafter, the plaintiff-appellant and respondents were put in possession of their respective shares and are residing in their respective portions with separate electricity and water connections. Therefore, the borrowers including the co-borrowers had no right to create equitable mortgage of the disputed property. Learned Senior Counsel further argues that the plaintiff-appellant is entitled to get

the property partitioned by metes and bounds and the relief with regard to partition of the property can be granted only by Civil Court. Hence, the suit filed by the plaintiff-appellant cannot be said to be barred by law. It has also been argued that the property was not under the sole ownership of Smt. Ratan Kanwar and thereby, creating an equitable mortgage of the property is detrimental to the legal rights of the plaintiff-appellant, therefore, the plaintiff-appellant is entitled to get the equitable mortgage of the property be declared as null and void.

7. Learned Senior Counsel contends that as soon as the plaintiff-appellant came to know about the notice issued under Section 13(2) of the Act of 2002 by the respondent No.1, the present suit was filed, therefore, this suit cannot be said to be barred by the provisions of the Act of 2002. Learned Senior Counsel further contends that this is declaratory relief which can be granted by Civil Court only, hence, learned trial Court has erred in allowing the application filed on behalf of the respondent No.1 under Order VII Rule 11 of CPC, thereby, rejecting the plaint of the plaintiff-appellant. Thus, it has been argued that the reliefs claimed in the plaint can only be granted by the Civil Court, and the suit is maintainable, and the impugned order is not in consonance with the provisions of law and is liable to be set aside.

8. *Per contra*, learned Senior Counsel appearing on behalf of the respondent No.1 submits that admittedly, Smt. Ratan Kanwar was the owner of the property in question and the registered sale deed stands in her name till date, and has never been challenged. The so-called partition of the disputed property was effected just to evade Land and Building tax, which is clear from the perusal of

the order dated 28.07.1984 passed by Land and Building Tax Department. therefore, Smt. Ratan Kanwar being the registered owner of the property had a right to take a loan and create an equitable mortgage of the property in question. Thus, the impugned order of learned trial Court suffer with no infirmity or illegality. Hence, the present appeal be dismissed.

9. Heard learned Senior Counsels appearing on behalf of the parties and perused the entire material available on record.

10. As per the facts of the case in hand, the registered owner of the property in dispute is Smt. Ratan Kanwar, who purchased the property by registered sale deed. As per the plaint itself, the disputed property was orally partitioned on 01.10.1979 which was reduced into writing on 24.11.1979 and subsequently, the plaintiff-appellant and the defendant-respondent Nos.2 to 8 got their specific shares in the property in dispute. However, the ownership remained in the name of Smt. Ratan Kanwar. Till date, the sale deed in favour of Smt. Ratan Kanwar has never been challenged by any of the parties and no relief in this regard has been claimed in the suit. The registered owner of the property- Smt. Ratan Kanwar along with her son and daughter-in-law i.e. respondent Nos.2 and 3 borrowed a loan from the respondent No.1 by creating an equitable mortgage by depositing title deeds of the disputed property. The respondent Nos.2 and 3 have never challenged the ownership of Smt. Ratan Kanwar in the disputed property rather stand as co-borrowers. The suit was filed when the borrowers failed to repay the loan and a notice under Section 13(2) of the Act of 2002 was issued to the borrowers. Learned counsel for respondent No.1 has submitted that the suit is barred

by law as per the judgment passed by the Hon'ble Apex Court in the case of **Jagdish Singh** (supra), whereas, it has been contended on behalf of the plaintiff-appellant that at the stage of deciding the application filed under Order VII Rule 11 of CPC, only the contents of the plaint are to be considered and the reliefs claimed in the said suit, can only be granted by the Civil Court. Therefore, the suit is not barred by law as Debt Recovery Tribunal has no power to grant reliefs as claimed in the suit. This Court in the case of **Vijay Singh Vs. Buddha** reported in **2012 SCC Online Raj 3869** has laid down the principles to be considered while deciding application under Order VII Rule 11 of CPC. The relevant para 10 of the judgment is quoted below:-

"10. Before dealing with the factual scenario, the spectrum of Order 7 Rule 11 in the legal ambit needs to be noted. The legal position in regard to Order 7 Rule 11 CPC may be summerised as below:

- (i) The relevant facts which need to be looked into for deciding an application under Order 7 Rule 11 are the averments made in the plaint. The trial Court can exercise the power at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purpose of deciding an application under clause (d) of Order 7 Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.
- (ii) The basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.
- (iii) It is well settled that the question of jurisdiction namely whether a suit is exclusively triable by a revenue court or a Civil Court can take cognizance of

it has to be decided on the basis of allegations made in the plaint. It is also further settled that it is the substance of the plaint and the true nature of the suit that is to be seen to determine the question of jurisdiction. If in substance the relief claimed is one which the revenue court alone is entitled to give, the jurisdiction of the civil court will be ousted even though it may require the revenue court to incidentally determine some ancillary facts. In order to determine the true nature of the relief claimed in a suit, the pith and substance and not the form in which the relief may be couched has to be considered. Each case has to be examined on its own particular facts and no universal rule can be applicable to every case. If the aforesaid principles are not kept in view it may be open to a party to evade the liability as to exclusiveness of Jurisdiction. But care should be taken not to introduce anything in the plaint which may not be found there or which may be foreign to its purpose. A plaint should be construed as it is and not as it ought to be.

- (iv) The exclusion of jurisdiction of a civil court cannot be lightly inferred and the jurisdiction of the civil court cannot be ousted until the exclusion is clearly established. Under Section 9 of the CPC, a civil court can entertain a suit of a civil nature except a suit of which cognizance is either expressly or impliedly barred. A statute ousting the jurisdiction of the civil court must be strictly construed.
- (v) Apart from averments made in the plaint, documents filed by the plaintiff alongwith the plaint can also be looked into. Documents filed by the defendant, which are undisputed or cannot be disputed can also be looked into to decide an application filed under Order 7 Rule 11 CPC."

11. Thus, while deciding the application under Order VII Rule 11 of CPC, Court has to consider not only the averments made in the plaint but also, to see whether a real cause of action has been set out in the plaint or something illusory has been stated to get out of, Order VII Rule 11 of CPC. The Court can also take into consideration the facts which are undisputed.

12. Learned Senior Counsel for the plaintiff-appellant while placing reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Central Bank of India & Anr. Vs. Prabha Jain & Ors.** reported in **(2025) 4 SCC 38** has contended that in the case of **Prabha Jain** (supra), the Hon'ble Apex Court has held that the judgment passed in the case of **Jagdish Singh** (supra) is silent on the issue whether the suit, in which the relief, that can only be granted by the Civil Court be said to be barred by law under the provisions of the Act of 2002. Para 29 of the judgment of **Prabha Jain** (supra), is reproduced as follows:-

"29. In para 24 of *Jagdish Singh case [Jagdish Singh v. Heeralal, (2014) 1 SCC 479 : (2014) 1 SCC (Civ) 444]* , this Court held that DRT has jurisdiction with respect to "measures" taken by the secured creditor under Section 13(4) and that in respect of such matters, the civil court's jurisdiction is ousted. However, thereafter, there is no further discussion on the nature of the suit and without recording any finding that DRT has the power to decide partition suits, this Court straightaway affirmed the rejection of the plaint under Order 7 Rule 11. While doing so, this Court missed to consider that under Section 17, DRT has no power to partition properties and hence, the civil court's jurisdiction to grant a decree of partition cannot be said to be ousted. When there is no finding in the judgment that the DRT has the jurisdiction to grant the relief of partition, the judgment cannot be said to be a precedent on that point."

13. Learned Senior Counsel for the respondent No.1 also places reliance on the judgment passed by the Hon'ble Apex Court in the case of **Prabha Jain** (supra) and submits that the facts of the case in hand, are distinguishable from the facts of the case of **Prabha Jain** (supra). Therefore, the ratio in the case of **Prabha**

Jain (supra) is not applicable in the case in hand. Learned Senior Counsel has drawn attention of this Court towards the facts mentioned in para 5 of the case of **Prabha Jain** (supra), which are as follows:-

"5. It is the case of the plaintiff that the suit land was purchased by her late father-in-law vide sale deed dated 19-6-1967 and after his death on 15-8-2005, the same was inherited in equal shares by her late husband Mahendra Kumar Jain, husband's elder brother Sumer Chand Jain (Defendant 4) and mother-in-law. After the death of Mahendra Kumar, his one-third share was inherited by the plaintiff. However, Sumer Chand Jain without any partition amongst the heirs divided the land into several plots and sold them off illegally to different persons. One such plot was sold to Defendant 3 (Parmeshwar Das Prajapati) vide registered sale deed dated 3-7-2008 who in turn, mortgaged the same with Central Bank of India (Defendant 1) for the purpose of obtaining loan."

14. Learned Senior Counsel submits that in the case of **Prabha Jain** (supra), the sale deed was also challenged, whereas, in the case in hand, the registered sale deed has not been challenged.

15. As per learned Senior Counsel for the respondent No.1, the Hon'ble Apex Court in the case of **Prabha Jain** (supra) has clearly observed that only the Civil Court has jurisdiction to grant the relief of partition, however, in the present case, as per the averments made in the plaint, the suit property has already been partitioned amongst the plaintiff-appellant and the respondents except respondent No.1 having possession of their specific shares in the said property, as per the partition taken place in 1979, which was reduced into writing and was acted upon by the parties.

16. In this regard, this Court deems it appropriate to quote para 10 of the suit-

"10. यह कि वादी की माता स्व. श्री रतन कंवर का देहावसान दिनांक 29.11.2024 को जयपुर शहर में हो गया उन्होंने अपने हिस्से की एक वसीयत दिनांक 22.10.2024 को कर दी जिससे उन्होंने अपना हिस्सा अपने तीनों पुत्रों को बंटवारा बराबर के हिस्से कर दिये कि जो कि अभी तक अविभाजित है।"

17. The facts as mentioned hereinabove in para 10 of the plaint reveal that while admitting the factum of partition of the suit property in the year 1979 itself, the plaintiff-appellant wants partition of the share of Smt. Ratan Kanwar only, whereas, in the relief No.1 of the plaint, it has been claimed that the plaintiff-appellant is entitled to get 1/3rd share in the entire disputed property thus, the averments of the plaint are self-contradictory.

18. Learned counsel for the respondent No.1 submits that as per the judgment passed in the case of **Jagdish** (supra), once the proceedings under the Act of 2002 have been initiated, all objections should be presented before DRT/DRAT, and the jurisdiction of Civil Court is barred. The Hon'ble Apex Court in paras 22 and 23 of **Jagdish** (supra) has held as follows:-

"22. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The

opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.

23. We are of the view that the civil court jurisdiction is completely barred, so far as the "measure" taken by a secured creditor under sub-section (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal. to determine as to whether there has been any illegality in the "measures" taken. The bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondent Nos.6 to 8 have been crystallised, before creating security interest in respect of the secured assets. In such circumstances, we are of the view that the High Court was in error in holding that only civil court has jurisdiction to examine as to whether the "measures" taken by the secured creditor under sub-section (4) of Section 13 of the Securitisation Act were legal or not. In such circumstances, the appeal is allowed and the

judgment of the High Court is set aside. There shall be no order as to costs."

19. In the case in hand, it is an admitted fact that Smt. Ratan Kanwar is the registered owner of the property in question. The validity of sale deed has never been challenged. Being registered owner, she has taken the loan from the respondent No.1 by mortgaging the property, along with her son and daughter-in-law, (respondent Nos.2 and 3) co-borrowers. The facts of the case of **Prabha Jain** (supra), relied upon by the appellant are different from the case in hand. Hence, the appellant is not entitled to get any benefit on the basis of **Prabha Jain's** case. The appellant shall have opportunity to raise all objections available to him before DRT/DRAT as per the provisions of the Act of 2002, as has been laid down in **Jagdish Singh's** case. Thus, this Court finds that the impugned order dated 14.08.2025 suffers with no illegality or infirmity.

20. In view of the aforesaid discussion, the present appeal is liable to be dismissed.

21. Accordingly, the present appeal stands dismissed. Any pending applications also stand disposed of.

(ASHUTOSH KUMAR),J