

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14972 of 2008

- =====
1. Indu Rekha Roy wife of Late Rishikesh Roy
 2. Surendra Nath Roy
 3. Saurav Kumar Roy
- Both sons of Late Rishikesh Roy
All resident of village Janidih, P.S.Colganj, P.O. Ghogha, District Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Bhagalpur
2. The D.C.L.R., Colganj, Bhagalpur
3. Smt.Manorma Devi wife of Sahdeo Mandal, resident of village Gopalpur, P.S.Colganj, P.O. Ghogha, District Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Mishra, Advocate

For the Respondent Nos. 1 & 2 : Mr. Anjani Kumar, AAG 6
Mr.Sanjay Kumar, AC to AAG 6

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

10 18-08-2015

Heard learned counsel for the petitioners and learned AAG 6, appearing on behalf of the respondent nos. 1 and 2. However, none appears on behalf of the respondent no.3, though she has already entered appearance through her counsel, whose name is printed in the daily cause list.

2. The petitioners are aggrieved by the order dated 03.01.2008 passed in Mortgage (Sudbharna) Revision No. 77 of 1999-2000 (Annexure-5) by the respondent District Collector, Bhagalpur, whereby the aforesaid revision application filed on behalf of the petitioners has been dropped/rejected.

3. Learned counsel appearing on behalf of the petitioners submits that the claim of the petitioners with respect to lands in question was/is basically under Section 12 of the Bihar Money Lenders Act, 1974 and for redemption of mortgaged deed



in view of expiry of period of seven years, but their claim has not been decided either by the respondent DCLR or the respondent District Collector, Bhagalpur on merits. According to him, the respondent District Collector without considering the merits of the claims of the parties has rejected the aforesaid revision application filed on behalf of the petitioners merely on the ground of non-supply of information regarding Title Appeal no. 06 of 1998. He further submits that the aforesaid Title Appeal no. 06 of 1998 has already been withdrawn by order dated 07.06.2010. Therefore, according to him, the matter may be remitted back to the respondent District Collector, Bhagalpur for deciding the case of the parties afresh on merits.

4. Learned AAG 6, appearing on behalf of the respondent nos. 1 and 2, submits that the claim of the petitioner cannot be adjudicated upon under Section 12 of the Bihar Money Lenders Act, 1974 in view of nature of mortgage deed. However, he fairly conceded that the matter has not been decided on merits by the respondent District Collector.

5. As noticed above, none appears on behalf of the respondent no.3 despite valid service of notice and appearance through her lawyer.

6. From plain perusal of the impugned order dated 03.01.2008 (Annexure-5) this Court finds that dispute between the parties regarding lands in question has not been decided on merit. The respondent District Collector does not appear to have applied his independent judicial mind to the facts of the case. In above view of the matter, aforesaid revision case requires re-consideration and fresh decision on merits.

7. For the reasons recorded above, the impugned

order dated 03.01.2008 passed in Mortgage (Sudbherna) Revision Case No. 77 of 1999-2000 (Annexure-5) is hereby set aside and quashed and the matter is remitted back to the respondent District Collector with a direction to pass a fresh order in accordance with law, after taking into consideration the claim of the respective parties. However, before passing any final order, opportunity of hearing shall be given to all concerned including the petitioners and the respondent no.3, for placing their cases with respect to the lands under dispute.

8. The writ petition stands allowed to the extent indicated above.

(Birendra Prasad Verma, J)

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