

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4184 of 1995

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Rameshwar Singh, son of Late Ram Ekbal Singh, resident of village – Chandpara, P.S. – Karoo, District – Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The Collector, Muzaffarpur.
4. The Additional Collector, Muzaffarpur.
5. D.C.L.R. (West) Muzaffarpur.
6. Anchal Adhikari, Karoo, P.S. and Anchal Karoo, District – Muzaffarpur.
7. Roshanandan Paswan, son of Sri Deonandan Paswan, resident of village Chandpara, P.S. – Karoo, District – Muzaffarpur.

.... Respondents

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
ORAL JUDGMENT

Date: 07-05-2015

No one appears on behalf of the petitioner nor anyone is appearing on behalf of contesting respondent no.7. Learned counsel for the State is present

2. The case of the writ petitioner is that his father has got the lands in question from father of respondent no. 7 by way of usufructuary mortgage executed by father of respondent no. 7. Father of respondent no. 7 had also borrowed some money apart from mortgage aforesaid. In due course of time, he had surrendered certain lands to the father of writ petitioner.

Respondent no. 7 moved the Circle Officer with a prayer that the mortgage deeds executed by his father in favour of father of petitioner were deemed to be redeemed under Section 12 of the Bihar Money Lenders Act (hereinafter referred to as the 'Act') and the lands be returned to respondent no. 7 free from encumbrance. The Circle Officer, upon notice to the writ petitioner decided the matter in favour of respondent no. 7 holding that the mortgage subsisting, in terms of Section 12 of the Act, stood redeemed. Accordingly, he directed for restoration of possession of respondent no. 7 in respect of the lands. Writ petitioner took the matter in appeal before D.C.L.R. and D.C.L.R. reversed the order of the Circle Officer only on the ground that in terms of the Limitation Act, the period of redemption on mortgage is 30 years and respondent no. 7, not having sought redemption of mortgage, was precluded in respect thereof. Respondent no. 7 then filed a Revision Application before the Collector who reversed the order of the D.C.L.R. and restored the order of the Circle Officer clearly holding that mortgage is always mortgage. Now, in terms of Section 12 of the Act, the mortgage stood redeemed. The



3

possession had to be restored to respondent no. 7 who was the son of original mortgager. He also rejected the claim of settlement of lands in favour of writ petitioner by the father of respondent no. 7 as there were no documents of transfer in support thereof. The matter then travelled to the Divisional Commissioner who has affirmed the order of the Collector, and, thus, the writ petitioner is before this Court.

3. In my view, no case for interference is made out. On seeing of all the orders of the courts below, there is no dispute that the writ petitioner came in possession of the lands by virtue of usufructuary mortgage deeds and enjoyed the lands and usufruct thereof for long. The authorities have noted the well established principle that mortgage is always mortgage, but, there is yet no fundamental principle i.e. equated to redemption, which is never lost except by way of order of the civil court.

4. Here, by virtue of Section 12 of the Act itself, the usufructuary mortgage stood redeemed on expiry of seven years of the mortgage deed. If that be the operation of law, then, merely because the writ petitioner



or his father or his family members continued in possession could be of no avail. Therefore, there is no merit in this writ petition. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

Rajeev/-

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