

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1385 of 1998
In
First Appeal No. 923 of 70

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1. Jiweshwar Prasad Singh
2. Parmeshwar Prasad Singh
Both sons of late Braj Kishore Mewar
3. Shiv Kumari Devi s/o late Braj Kishore Mewar
All residents of village-Ektara, P.S. Benipatti, District- Madhubani
(Bihar).

.... Appellant/s

Versus

Ashok Kumar Mowar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Ms. Mallika Mazumdar
Mr. Bishwa Nath Chaudhary

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

16 01-07-2015

Heard learned counsel for the appellants.

2.No one appears for the respondents though notices
have been served.

3. Defendant 1st set assailed the judgment dated
13.11.1998 passed by the learned Single Judge of this Court in
First Appeal No. 923 of 1970 whereunder the learned Single Judge
affirmed the judgment and decree dated 04.06.1970 passed by 2nd
Additional Subordinate Judge, Darbhanga, in Title Suit No. 98/
1929 of 1965/ 1970.

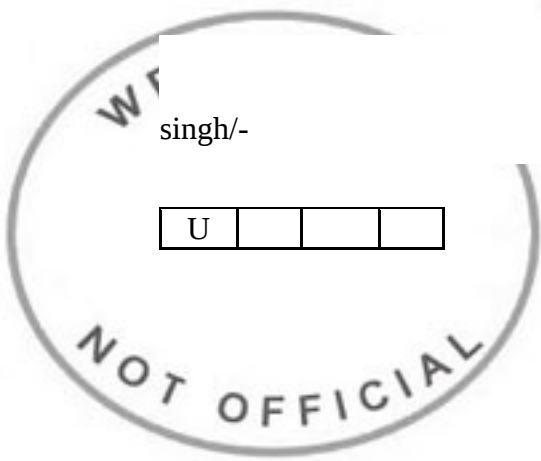
4. The plaintiffs- respondents 1 to 5 initially filed a
Money Suit in which the lands, in question, were attached. Later



the Money Suit was converted into a suit for redemption of the lands attached in the Money Suit in the light of the mortgage deed executed by defendant 3rd set in favour of the plaintiffs. Still later plaintiff converted the mortgage suit into a suit for declaration of title and possession over the suit land on the basis of sale deed dated 12.10.1963, Ext. 7 series. Defendant 3rd set had also executed sale deed dated 31.08.1963 (Ext. D/7) for the same land in favour of defendant 1st set.

5. From the judgment it is evident that Money Suit was later converted in a suit for redemption of mortgage, which was again converted in a suit for declaration of title and possession by the plaintiff mortgagee as he sought declaration on the basis of sale deed dated 12.10.1963 (Ext. 7 series). The sale deed dated 12.10.1963 executed by defendant no. 14 in favour of plaintiff will prevail over the earlier sale deed dated 31.08.1963, Ext. D/7 also executed by defendant no.14 in favour of defendant 1st set as subsequent sale deed was executed ignoring the attachment order passed in Money Suit No. 43 of 1962. The suit for declaration of title and possession over the suit land has been decreed. The learned Single Judge has maintained the judgment and decree passed by the trial court as subsequent sale deed dated 12.10.1963 executed in the light of attachment order shall prevail over the earlier sale deed dated 31.08. 1963 executed ignoring the

attachment order. We find no merit in this appeal. It is accordingly dismissed.



(V.N. Sinha, J)

(Nilu Agrawal, J)