

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.672 of 2016**

- =====
1. Jagdish Singh,
 2. Ram Lal Singh Both Sons of Late Lakshman Singh, Resident of
Village- Fatehpur Bale, P.S- Musri Gharari, District- Samastipur

.... Appellant/s

Versus

Sukhdeo Singh, Son of Late Ram Khelaon Singh, Resident of Village-
Fatehpur Bale, P.S- Musri Gharari, District- Samastipur.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Dhirendra Kumar, Adv.

For the Respondent/s : Mr. Mukesh Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

6 06-04-2017 Heard learned counsel for the petitioners and learned
counsel for the respondent.

The legal acceptability of the impugned order by
which the learned court below has rejected the petition of the
defendant-petitioners under Section 10 and 11 C.P.C. has been
questioned in this application under Article 227 of the Constitution
of India.

The facts are not in dispute between the parties that
a deed dated 15.09.1979 has been executed in between the parties.
However, the defendant-petitioners on the basis of their assertion
that this deed dated 15.09.1979 in fact was a deed of mortgage
with conditional sale filed T.S. No. 131 of 2011 for declaration of
their title and confirmation of possession/recovery of possession



over the suit land. In the said suit, as it appears from the judgment (Annexure-1), the specific issue was framed pertaining to acquisition of right, title and interest over the suit land by the plaintiffs on the basis of Maiyadi Kewala dated 15.09.1979. This issue was decided against the plaintiff of that suit holding that the said deed dated 15.09.1979 was in fact a deed of mortgage with conditional sale and not outright sale deed and as no suit for foreclosure had been filed, the plaintiff did not acquire title over the suit land. The court, however, directed the defendants of that suit to hand over the possession of the suit land to the plaintiff. The fact is also not in dispute that the plaintiffs of that suit (petitioners at present) have filed Title Appeal No. 65 of 2014 which is pending. After the judgment and decree in T.S. No. 131 of 2011, the defendant of that suit (respondent at present) has filed Title Suit No. 20 of 2014 with prayer for redemption of the mortgage created by the said deed dated 15.09.1979. The petitioners at present have been impleaded as defendants in the said suit.

The petition was filed under Section 10 and 11 C.P.C. by the petitioners praying for dismissal of the suit on the ground of maintainability. This petition has been dismissed by the court below by the impugned order.



After considering the submissions on behalf of the parties and materials on record including the impugned order, it is evident that the discordant note between the parties is as to whether the mortgage created by the deed of mortgage with conditional sale is still subsisting with the right of redemption with the plaintiffs or the defendant have acquired title on the basis of the said transaction after the failure of the plaintiffs to pay back the mortgage money within the period stipulated therein. This issue was directly and substantially in issue in the earlier T.S. No. 131 of 2011 and the matter is pending at the appellate stage in Title Appeal No. 65 of 2014 filed against the judgment and decree of that suit. In this factual background, it is therefore perceptible that in the subsequent suit i.e. Title Suit No. 20 of 2014 filed by the respondent for redemption of the mortgage created by the said deed dated 15.09.1979 the same issue arises directly and substantially for determination before the court. The principles governing the consideration of the prayer under Section 10 C.P.C. has been laid down by their lordships in the case of **National Insurance of Mental Health and Neuro Sciences Vs. V.C. Parameshwara, A.I.R. 2004 SCW 6900** and on the anvil of the dictum of the Apex Court, this Court finds that the learned court below has illegally turned down the prayer of the petitioners for



stay of the further proceeding of that suit (T.S. No. 20 of 2014). The decisions relied upon by learned counsel for the respondent as reported in the case of **Smt. Sneh Lata Mathur Vs. Brij Raj Bahadur, A.I.R. 2003 Del. 259** and in the case of **Sita Ram Bharati Vs. Bhairi Bharati, A.I.R. 1984 Pat. 160** have been rendered in different settings of facts and are clearly distinguishable.

In result, this application stands allowed and the impugned order dated 12.05.2016 is quashed. The petition dated 15.01.2015 filed by the petitioners in T.S. No. 20 of 2014 is allowed and the further proceeding of the said suit is stayed till the disposal of the Title Appeal No. 65 of 2014.

At this juncture, learned counsel for the respondent has prayed for a direction for early disposal of the Title Appeal No. 65 of 2014.

After considering the facts and circumstances of the case, the appellate court where the Title Appeal No. 20 of 2014 is pending is directed to take up the hearing of the appeal expeditiously and dispose it of preferably within a period of six months from the date of receipt/production of this order.

Devendra/-

(V. Nath, J)

U			
---	--	--	--

