

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22219 of 2012

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1. Ram Jyoti Devi Wife of Late Gyanchand Sahni, Resident of Village Godhna, P.O. Godhna, P.S. Bachhwara, District Begusarai.
 2. Raj Kumar Sahni Son of Late Gyanchand Sahni, Resident of Village Godhna, P.O. Godhna, P.S. Bachhwara, District Begusarai.

.... Petitioners

Versus

1. Ram Bilas Sahni Son of Late Gopi Sahni, Resident of Village Godhna, P.O. Godhna, P.S. Bachhwara, District Begusarai.
2. Satya Narayan Sahni Son of Late Gopi Sahni, Resident of Village Godhna, P.O. Godhna, P.S. Bachhwara, District Begusarai.
3. Prem Sahni Son of Gyanchand Sahni, Resident of Village Godhna, P.O. Godhna, P.S. Bachhwara, District Begusarai.
4. Baldeo Sahni Son of Late Ram Prasad Sahni, Resident of Village Godhna, P.O. Godhna, P.S. Bachhwara, District Begusarai.
5. Surendra Sahni Son of Late Ram Prasad Sahni, Resident of Village Godhna, P.O. Godhna, P.S. Bachhwara, District Begusarai.
6. Anil Sahni Son of Late Ram Prasad Sahni, Resident of Village Godhna, P.O. Godhna, P.S. Bachhwara, District Begusarai.
7. Fulo Sahni Son of Late Ram Prasad Sahni, Resident of Village Godhna, P.O. Godhna, P.S. Bachhwara, District Begusarai.
8. Binod Sahni Son of Late Gyanchand Sahni, Resident of Village Godhna, P.O. Godhna, P.S. Bachhwara, District Begusarai.
9. Mukesh Sahni Son Of Late Gyanchand Sahni Resident Of Village Godhna, P.O. Godhna, P.S. Bachhwara, District Begusarai
10. Rakesh Sahni Son of Late Gyanchand Sahni, Resident of Village Godhna, P.O. Godhna, P.S. Bachhwara, District Begusarai.

.... Respondents

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Appearance :

For the Petitioners	:	Mr. S.D. Yadav, Advocate Mr. Kumar Gautam, Advocate
For the Respondents	:	Mr. Ambuj Nayan Choubey, Advocate Mr. Vikas Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

C.A.V. JUDGMENT

Date: 01-02-2018

This writ application has been filed to quash the order
dated 12.04.2012 passed by learned Munsif II, Begusarai in Title
Execution Case No.09 of 2008 whereby and whereunder the court



below rejected the objection petition dated 19.05.2011 filed by these petitioners.

2. Heard learned counsel for the petitioners as well as the respondents.

3. The respondents 1st set claimed to have purchased the equity of redemption by a registered sale deed dated 25.11.1974 from Late Mahabir Sahni filed Miscellaneous Case No.19 of 2005 on the file of Munsif under Section 83 of the Transfer of Property Act. The said land was under mortgage with Ram Prasad Sahni (ancestor of respondents 2nd set). After purchase, the respondents 1st set tendered the mortgage amount to the mortgagee and requested them to return the mortgage bond. The respondents 1st set, on refusal of mortgagee to receive the money, filed Miscellaneous Case No.19 of 2005 and deposited the mortgage amount of Rs.1500/- in Civil Court and prayed to serve a notice on the mortgagee to receive the mortgage money. Thereafter the respondents 1st set filed Execution Case No.09 of 2008 before Munsif for delivery of possession over the mortgaged property. The petitioners being judgment-debtors filed objection petition before the court below and prayed to dismiss the execution case as not executable. The learned court below after hearing both sides dismissed the petition as per impugned order dated 12.04.2012.

4. The learned counsel for the petitioners submitted that



the respondents are not entitled to get delivery of possession unless a decree for redemption of mortgage is passed in their favour under the provision of Section 84 of the Transfer of Property Act as well as Order 34 Rule 1 of C.P.C. There is specific provision for the mortgagor to file a suit for redemption of mortgage bond under Section 84 of the Transfer of Property Act.

5. The respondents 1st set admittedly have not filed any suit for redemption with a prayer to re-convey the property and put them in possession through process of the Court. The respondents 1st set are not entitled to possession unless they obtain a redemption decree against the petitioners from a competent court. The execution case without any decree for redemption is not maintainable.

6. In view of above fact the impugned order rejecting the objection of the petitioners is set aside and this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	16.01.2018
Uploading Date	02.02.2018
Transmission Date	

