

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1693 of 2013

In
Second Appeal No.646 of 2010

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1. RAM CHANDRA YADAV S/O LATE BIHARI YADAV
RESIDENT OF VILLAGE RASALPUR SAHORATH BAHERI,
P.O. AND P.S. AMOD BAHERI, DISTRICT DARBHANGA.
 2. KRISHNA MOHAN YADAV @ KRISHNA KUMAR YADAV S/O
RAMCHANDRA YADAV RESIDENT OF VILLAGE RASALPUR
SAHORATH BAHERI, P.O. AND P.S. AMOD BAHERI,
DISTRICT DARBHANGA.
 3. DHARMENDRA YADAV S/O RAMCHANDRA YADAV
RESIDENT OF VILLAGE RASALPUR SAHORATH BAHERI,
P.O. AND P.S. AMOD BAHERI, DISTRICT DARBHANGA.
 4. GAYATRI DEVI D/O RAM CHANDRA YADAV RESIDENT OF
VILLAGE JAKASO JAMALPUR, P.S. GHANSHYAMPUR, P.O.
JAKASO JAMALPUR VIA BIRAUL, DISTRICT DARBHANGA.
 5. MANJU DEVI D/O RAM CHANDRA YADAV W/O
CHANDRADEO YADAV RESIDENT OF VILLAGE ARGA, VIA
BAHERI, P.S. BIRAUL, DISTRICT DARBHANGA.
 6. INDU DEVI D/O RAM CHANDRA YADAV W/O VIJAY YADAV
RESIDENT OF VILLAGE CHACHANU, P.O. CHACHONI, VIA
BITHAN, P.S. BITHAN, DISTRICT SAMASTIPUR.
 7. RANJU KUMAR @ RANJU DEVI D/O RAM CHANDRA
YADAV W/O DAYA NAND YADAV RESIDENT OF VILLAGE
CHACHANI, P.O. CHACHANI, VIA BITHAN, P.S. BITHAN,
DISTRICT SAMASTIPUR.
 8. NILU KUMARI MINOR D/O RAM CHANDRA UNDER THE
GUARDIANSHIP OF HER FATHER RAM CHANDRA YADAV
RESIDENT OF VILLAGE RASALPUR, SAHORAN @ BAHERI,
P.O. AND P.S. BAHERI, DISTRICT DARBHANGA.

... .. Petitioner/s

Versus

Jagdish Yadav S/O Late Sahib Narayan Resident Of Village Rasalpur,
Sahoran @ Baheri, P.O. And P.S. Baheri, District Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bhubneshwar Prasad
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL ORDER

10 26-10-2018

Second Appeal No. 646 of 2010 stood dismissed in

default for non-compliance of the peremptory order dated



22.11.2011, whereby the appellants/petitioners were required to remove certain defects pointed out by the Stamp Reporter which was not done since the appellants had failed to comply with an earlier order dated 14.09.2011, of the Lawzima Board. For restoration of the said second appeal, MJC No. 1693 of 2013 has been filed. From the order-sheet, it transpires that several adjournments were granted in the restoration application. When on 18.09.2018, again an adjournment was being sought on the ground of illness of the learned counsel for the appellants, this Court recorded the previous adjournments already granted. Be it noted that on the previous occasion, viz., 11.09.2018, this Court had made it clear that it will examine the merit of the second appeal also before considering the case for restoration.

2. Accordingly, I have heard Mr. Bhubneshwar Prasad, learned counsel for the appellants both in the restoration matter and on the merits of the second appeal. Seeking restoration of the second appeal, it has been asserted in the application of MJC No. 1693 of 2013 that after the order dated 22.11.2011 was passed allowing two weeks' peremptory time for removing the defects, the appellants/petitioners filed an inspection slip on 25.11.2011 for the purpose of inspecting the file for complying with the said order but the Section pointed



out on 25.11.2011 that the file was placed before the Bench for orders. It is also asserted that the appellants/petitioners filed another inspection slip for inspection of the filed for compliance of the peremptory order of this Court but the said slip could not be placed for inspection and, therefore, the appellants could not comply with the said order. The assertion that after the appellants had filed the inspection slip on 25.11.2011, he had filed another slip again for the said purpose of complying with the peremptory order of this Court is vague inasmuch as it does not mention the date when the said inspection slip was filed. The appellant has, in the application, blamed the Registry of this Court for non compliance of the peremptory order. The petitioners/appellants were allowed two weeks' time by order dated 22.11.2011. Whether the petitioners/appellants took any effective step for compliance of the said order after 25.11.2011, has not been stated. No application was filed for extension of time granted by this Court by order dated 22.11.2011 for removing the defects till the time so granted lapsed. The appellants/petitioners filed the present restoration application nearly one and half years after they were directed to remove the defects. This is one aspect of the matter. The another aspect is that the defects which was pointed out by the Registry was that



the memo of appeal did not contain substantial questions of law, which according to the appellants/petitioners, the second appeal involves.

3. Mr. Bhuneshwar Prasad, learned counsel appearing on behalf of the appellants/petitioners has contended that the second appeal involves several substantial questions of law and has argued that the Courts below have erred in holding that the documents in question were deeds of mortgage and not out and out sale deed and, therefore, the plaintiff/respondent did not have any right to repurchase the said land. He has also argued that the Courts below have erred in holding that all the exhibits come under the purview of Section 12 of the Money Lenders Act, 1974, since “House mai sahan (मकान मय सहन)” had been mentioned in the sale deeds and, therefore, the sale deeds did not come under the purview of the Act. The gist of the arguments on behalf of the appellants has been that the documents in question have wrongly been treated as deed of mortgage and not sale deeds.

4. The Courts below, based on appreciation of rival pleadings on record and evaluation of the evidence, both oral and documentary have concurrently held the deeds to be mortgage deeds and, therefore, were liable to be released from



the defendants. One of the issues which was to be decided by the trial Court, was whether the suit of the plaintiff/respondent came under the purview of Section 12 of the Act and in that background issue No.6 was framed as to whether the order passed by the Collector under Section 12 of the Act were valid or not. The Courts below after having recorded their concurrent finding that the documents were not the sale deeds rather the deeds of mortgage have held that all the documents except 2/A and 2/D were covered by the Act. After having held so, the trial Court directed the appellants to hand over the possession in favour of the plaintiff on payment of an amount of Rs. 6,000/- (six thousand) in respect of the suit property covered by exhibit 2/A (Keshra No. 4359 and 4360 admeasuring 14 dhur) and exhibit 2/D (Keshra No. 4136, 14 dhurs) within sixty days. The concurrent findings so recorded by the Courts below, in my view, are based on appreciation of evidence and application of correct principles of law. As a matter of fact, the Second Appeal itself was not maintainable since it did not contain substantial questions of law which according to the appellants, the appeal involved. The substantial questions of law which learned counsel for the petitioners/appellants has attempted to raise in course of argument cannot be treated to the substantial



questions.

5. In that view of the matter, no purpose would be served by restoration of the second appeal which stood dismissed for non-compliance of the peremptory order of this Court.

6. MJC No.1693 of 2013 is, accordingly, dismissed since in my view, it does not contain satisfactory explanation for non-compliance of the peremptory order within the time stipulated.

7. The conduct of the appellant of blaming the Registry of this Court for not providing the file for removal of the defects in the absence of any explanation as to what steps were taken by the appellants for removal of the defects after 25.11.2011 cannot at all be treated to be justified.

8. MJC No. 1693 of 2013 is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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