

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2540 of 2015

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Kapildeo Singh Son of Shiv Sagar Singh, resident of village - Balsama, P.O. Goroul, District – Vaishali.

.... Petitioner

Versus

Baleshwar Prasad Singh Son of Late Ram Chandra Singh, resident of village - Balsama, P.O. Goroul, District – Vaishali.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Ratna Deep Prasad, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 13-09-2018

Petitioner before this court was applicant of Miscellaneous Case No.09 of 2010 which was disposed of on 21.11.2014 by the court of learned Munsif II, Vaishali at Hajipur.

2. Heard learned counsel for the petitioner and perused the record.

3. It appears that the petitioner filed the aforesaid miscellaneous case under the provision of Section 83 of the Transfer of Property Act.

4. It has been submitted that the petitioner executed a mortgage deed in favour of respondent on 17.05.1984 with respect to 7½ decimal land of plot no.551. The petitioner had taken loan of Rs.2,000/- against the said mortgage and the mortgagee was put in



possession over the same. The loan amount was returnable by 30.05.1988. It is said that in spite of lapse of aforesaid period the mortgagee remained in possession over the land. The petitioner sent the mortgage money to the respondent which was refused and thereafter the petitioner gave registered notice on 18.06.2010 and 06.07.2010 which were refused by the respondent. The petitioner filed the aforesaid miscellaneous case on the file of learned Munsif II, along with treasury challan showing deposit of Rs.2050/- (Rs.2,000/- as mortgage amount and Rs.50/- as registration cost) and prayed to issue order for deposit of mortgage amount through the said challan. The respondent filed written statement and admitted the case of mortgage as asserted by the petitioner. The respondent, however, asserted that this petitioner subsequently entered into an agreement to sell the said land for which a deed of agreement was executed. The defendant-respondent filed a Title Suit No.417 of 2011 for specific performance of contract. The prayer of the respondent to stay the further proceeding of Miscellaneous Case No.09 of 2010 was rejected on 07.07.2012 but on subsequent date the said miscellaneous case was dismissed observing that the dispute between the parties need substantive adjudication of redemption of mortgage. The court below has committed error in rejecting the miscellaneous case. The provision of Section 83 of the Transfer of Property Act provides a



summary proceeding for tendering/depositing mortgage amount in favour of mortgagee and on accepting the mortgage money, the mortgagee shall deposit the mortgage deed. However, any dispute is raised, Section 83 would not entitle the court to resolve the dispute. After deposit of money by the mortgagor, the court is required to serve notice on mortgagee and thereafter close the proceeding.

5. Thus in view of provision of Section 83 of the Transfer of Property Act, the order rejecting the miscellaneous case is not sustainable and is accordingly set aside and this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.09.2018
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