

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.121 of 2020

1. Ram Krishna Pd. Singh alias Ram Krishna Singh son of Ramchandra Singh, Resident of Bihat Tola Ibrahimpur, P.O.- Bihat P.S.- Barauni, and District- Begusarai.
2. Ram Bhushan Singh, son of Ramchandra Singh, Resident of Bihat Tola Ibrahimpur, P.O.- Bihat P.S.- Barauni, and District- Begusarai.
3. Ram Sumiran Singh, son of Ramchandra Singh, Resident of Bihat Tola Ibrahimpur, P.O.- Bihat P.S.- Barauni, and District- Begusarai.

... .. Petitioner/s

Versus

1. Nawal Kishore Singh son of Late Bindeshwari Pd. Singh, resident of village Chintamanichak, P.S. - Mokams, District- Patna.
2. Kamal Kishore Singh, son of Late Bindeshwari Pd. Singh, resident of village Chintamanichak, P.S. - Mokams, District- Patna.
3. Bharat Bhushan Pd. Singh, resident of village Chintamanichak, P.S. - Mokams, District- Patna.
4. Smt. Kadambari Devi, w/o Late Sohan Pd. Singh, resident of village Chintamanichak, P.S. - Mokams, District- Patna.
5. Sudarshan Kumar, s/o Late Sohan Pd. Singh, resident of village Chintamanichak, P.S. - Mokams, District- Patna.
6. Jitendra Kumar, s/o Late Sohan Pd. Singh, resident of village Chintamanichak, P.S. - Mokams, District- Patna.
7. Dharmendra Kumar, s/o Ramendra Pd. Narayan Singh, Resident of E/74, Amama Block Krishna Apartment, Boring Road Patna.
8. Ramendra Pd. Narayan Singh, s/o late Raghbendra Pd. Singh, husband of Late Baidehi Devi, Resident of E/74, Amama Block Krishna Apartment, Boring Road Patna.
9. Ramesh Pd. Singh, son of Late Baidhyanath Pd. Singh, Resident of village and P.O. - Mahmadpur Panita, P.S.- Sonki, District- Darbhanga.
10. Mahesh Pd. Singh, son of Late Baidhyanath Pd. Singh, Resident of village and P.O. - Mahmadpur Panita, P.S.- Sonki, District- Darbhanga.
11. Chandra Bhushan Pd. Singh, son of Late Baidhyanath Pd. Singh, Resident of village and P.O. - Mahmadpur Panita, P.S.- Sonki, District- Darbhanga.
12. mani Bhushan Pd. Singh, son of Late Baidhyanath Pd. Singh, Resident of village and P.O. - Mahmadpur Panita, P.S.- Sonki, District- Darbhanga.
13. Smt. Manjula Devi, wife of Madhu Pd. Singh, Resident of Village and P.O. - Rampur, P.S.- Hasanpur, District- Samastipur.
14. Kumkum Singh, wife of Suman Kumar Singh, Resident of village and P.O.- Rasalpur, P.s.- Parsauni, District- Sitamarhi.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Ram Sumiran Singh
For the Respondent/s : Mr. Vikas Kumar Sharma

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 29-09-2022 The present application has been filed by the petitioners being aggrieved by the order, dated 26.11.2019, passed by learned Sub Judge-IV, Barh, Patna, in Misc. (Restitution) Case No. 02 of 2016, by which the order, dated 30.08.2019, directing the respondents to produce evidence on the point of their claim of mesne profit and further directed for restitution of the suit land in favour of the respondents.

The brief facts, giving rise to the present case, is that the original respondent no. 1 had mortgaged the subject land in 1963 by virtue of six mortgage deeds/bonds in favour of the petitioners, his father and mother. The mortgage in question was usufructs but in the year 1964, all the six mortgage deeds/bonds were cancelled. In the year 1969, a title mortgage suit was filed by the mortgagee, i.e. the petitioners and others for realization of a sum of Rs. 60,400/- paid by the mortgagee to the mortgagor as mortgage debt. The suit was decreed and against the preliminary decree, First Appeal No. 39 of 1976 was filed by the respondents herein. A final decree proceeding was initiated by the petitioners as the decree holders and subsequently Execution



Case No. 07 of 1976 was filed and in the auction sale, the petitioner and his family members purchased 88 bighas of suit land in auction sale. First Appeal No. 771 of 1976 was filed by the respondents against the final decree proceeding and both the first appeals were allowed by this Court and the decrees were set aside. Aggrieved by the same, the petitioners preferred review and thereafter S.L.P. before the Supreme Court, which was also dismissed and the review filed by the petitioners before the Supreme Court was also dismissed.

When the case was dismissed up to the Supreme Court and the decrees were set aside, a restitution case, under Section 144 of the Code of Civil Procedure was filed by the respondents for restitution of the possession of the respondents upon the suit land, which was purchased by the petitioners in the auction sale. A claim for mesne profit was also raised by the respondents in the Misc. (Restitution) Case No. 02 of 2016. At this stage, the learned Court below, which was in seisin of the case, pursuant to the orders of this Court, directed the respondents, vide order, dated 30.08.2019, to produce evidence on the question of mesne profit. However, at the request of the respondents, that for the purpose of calculating the mesne profit, the starting point as well as the terminus point has to be taken



into consideration and when the restitution of the property has not been allowed by the concerned Court, it would be difficult to produce evidence by the respondents on the point of mesne profit. After taking into consideration the statement of the respondents, learned Court below, in the restitution case, issued a writ of delivery of possession of the land, which was purchased by the petitioners in the auction sale and now the fact which emerges is that the delivery of possession has already been given in favour of the respondent Nawal Kishore Singh and others.

Learned Counsel for the petitioners submits that in fact the writ for delivery of possession has been issued for some other land of Mouza Goshwari and not of the lands, which were purchased by the petitioners in Mouza Goriyari and Mohanpur.

Learned Counsel for the respondents submits that all these issues raised by the petitioners were decided in CWJC No. 5519 of 2022, filed by the petitioners and the said writ petition has already been dismissed and against the same, the petitioners have preferred L.P.A. No. 401 of 2022, which is still pending before this Court.

Be that as it may, by the impugned order, the learned Court below has merely directed for restitution of possession of



the land in favour of the respondents in view of the fact that the petitioners have lost up to the Supreme Court.

Accordingly, I do not find any infirmity in the impugned order.

This application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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