

(1976) 09 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jur. Case No's. 3213 of 1975 and 370, 480, 499 and 840 of 1976

Kamlaprasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-09-1976

Acts Referred:

Bihar Money Lenders Act, 1974 — Section 12
Bihar Money Lenders Rules, 1975 — Rule 10

Citation : AIR 1977 Patna 84 : (1977) 25 BLJR 115

Hon'ble Judges : Shambhu Prasad Singh, J;S. Ali Ahmad, J

Bench : Division Bench

Advocate : Narain Singh, In CWJC 3213/75, Sheo Kumar Singh, In CWJC Nos. 370 and 499 of 1976, Janeshwar Singh and Uma Shankar Singh, In C.W.J.C. 480/76 and P.N. Roy, in CWJC 840/76, for the Appellant; Jainarain and R.P. Bhagat, (in CWJC 3213 of 1975), A.P. Singh, (J.C. to G.P. 4) (in CWJC 370/1976), K.N. Singh, (SC 4) (in CWJC 480/76), S.N. Jha (SC 2) and Shardanand Jha (J.C. to S.C. 2) (in CWJC 499/76), S. Shamshul Hassan (S.C. I) and Shrawan Kumar (J.C. to SC I) (in CWJC 840/76), for the Respondent

Final Decision : Allowed

Judgement

Shambhu Prasad Singh, J.—As these five writ applications raise a common question of law, they are being disposed of together by this judgment. They were heard almost simultaneously.

2. All these writ applications arise out of proceedings u/s 12 of the Bihar Money Lenders Act, 1974 (hereinafter referred to as "the Act") read with Rule 10 of the Bihar Money Lenders Rules, 1975 (hereinafter referred to as the Rules"). However, in view of the decision of a Bench of this Court in Kailash Pati Singh Vs. The State of Bihar and Others, in which the said section and the said rule were held to be intra vires, the petitioners at the time of hearing of these cases have not challenged the vires of the said section and the said rule.

3. In three of these cases, namely, C.W. J.C. No. 3213 of 1975 and C.W. J.C. Nos. 370 and 840 of 1976, the petitioner of each case, who is the mortgagee, has prayed for quashing of the notice issued to him under Rule 10 of the Rules. The said notice is annexure 3 to the petition in C.W. J.C. No. 3213 of 1975 and annexure 1 in C.W. J.C. Nos. 370 and 840 of 1976. In C.W. J.C. No. 480 of 1976, a prayer has been made for quashing the entire proceeding. A notice was issued in that case also which has been made annexure 2 to the petition in that case. In C.W. J.C. No. 499 of 1976, a prayer has been made for quashing the order dated 7th of January, 1976 as contained in annexure 1 allowing the petition of the mortgagor and directing for delivery of possession by the mortgagee-petitioner. The authority which issued the notice in four of the cases and passed the order in C.W. J.C. No. 499 of 1976 has been made respondent No. 2 in each case. The mortgagor in each case has been made respondent No. 3. C.W. J.C. No. 3213 of 1975 arises out of M.L. Case No 10 of 1975-76, CWCJ No. 370 of 1976 arises out of M. L. Case No. 63 of 1975-76, C.W.J.C. No. 480 of 1976 arises out of M.L. case No. 45 of 1975-76, C.W.J.C. No. 499 of 1976 arises out of M.L. Case No. 28 of 1975-76 and C.W.J.C. No. 840 of 1976 arises out of M.L. case No. 426 of 1975-76 of the court of respondent No. 2 in each case.

4. In C.W.J.C. No. 3213 of 1975 respondent No. 3 executed a usufructuary mortgage deed for Rs. 2500/- in favour of the petitioner on 16th of September, 1968. On 25th of June, 1971, he executed another usufructuary mortgage deed in favour of the petitioner for Rs. 500/- in respect of the same land. Though in the petition it is not alleged that the deeds were registered ones, but the original deeds were shown to us at the time of the hearing and both of them are registered.

5. In C.W.J.C. No. 370 of 1976, respondent No. 3 executed a usufructuary mortgage deed on 26th of June, 1966 for Rs. 5000/-. He executed second usufructuary mortgage deed on 12th of August, 1967 for Rs. 1000/- and a third one on 25th of July, 1970 for Rs. 1000/-. All these deeds were in favour of the petitioner and in respect of the same land.

6. In C.W. J.C. No. 480 of 1976, the husband of respondent No. 3 executed a usufructuary mortgage deed in favour of the petitioner on 28th of April, 1970 for Rs. 1500/-. On 18th of January, 1972, respondent No. 3, after the death of her husband executed another usufructuary mortgage deed in favour of the petitioner in respect of the same land for a consideration of Rs. 2000/-. It is alleged in the petition that these deeds were registered and that has not been denied.

7. In C.W. J.C. No. 499 of 1976, respondent No. 3 executed a usufructuary mortgage deed for a consideration of Rs. 100/- on 19th of June, 1960. He executed another usufructuary mortgage deed for a consideration of Rs. 300/- on 24th of March, 1962, a third one for a consideration of Rs. 700/- on 29th of July, 1965 and a fourth one for a consideration of Rs. 1000/- on 29th of June, 1970. All these deeds were in favour of the petitioner and in respect of the same land.

In this case also it is not alleged specifically whether these deeds were registered or not. It is further alleged in this case that the petitioner had no knowledge of the case before the order was passed and that fact has not been denied.

8. In C.W.J.C. No. 840 of 1976, respondent No. 3 executed a usufructuary mortgage deed on 1st of July, 1967, for a consideration of Rs. 1300/- in favour of the petitioner. He executed another usufructuary mortgage deed on 28th of July, 1970 for a consideration of Rs. 375/- in favour of the petitioner in respect of the same land. In the petition it is alleged that these deeds were registered and that fact has not been denied.

9. C.W.J.C. No. 370 of 1976 and C.W.J.C. No. 499 of 1976 were admitted on 19th of February, 1976 and 20th of February, 1976 respectively by a Bench of which I was a Member. After the decision in the said case of Kailash Pati Singh Vs. The State of Bihar and Others, , I definitely recollect that only such cases were admitted in which the deeds were produced before us and were found to be registered ones. Therefore, we are satisfied that the mortgage deeds of these two cases are also registered.

10. It has been contended in all these cases that as seven years have not elapsed from the date of the execution of the last usufructuary mortgage deed, the right of the mortgagee-petitioner to be in possession of the property has not been extinguished u/s 12 of the Act. On behalf of the respondent, however, it has been urged that all these deeds are really Charhaw deeds or deeds of Majid Rehan and, therefore, they should not be treated as separate usufructuary mortgage deeds but as part and parcel of the first usufructuary mortgage deed and as the period of seven years has elapsed from the date of execution of the original usufructuary mortgage deed, the right of the mortgagee under the last usufructuary mortgage deeds to be in possession has also been extinguished u/s 12 of the Act. In my opinion, the contention made by learned counsel for the petitioners in these cases is correct and that on behalf of the respondents is not correct. The last usufructuary mortgage deeds have to be treated as separate usufructuary mortgage deeds. Simply because the mortgagee-petitioner had advanced money and got executed a usufructuary mortgage deed in respect of the same property, earlier, his right under the last usufructuary mortgage deed cannot be held to be extinguished u/s 12 of the Act. That section confiscates the rights of a citizen which he has got under the ordinary law in respect of transfer of properties, i.e., the Transfer of Property Act, and such provisions have to be given a liberal construction in favour of the person whose right is confiscated. Further, neither the Act nor any other law prohibits a mortgagee from getting a subsequent mortgage executed in his favour from the mortgagor in respect of the same property. In my opinion, therefore, the last usufructuary mortgage deed in each of these cases has to be treated as a separate usufructuary mortgage deed and since seven years have not as yet elapsed from the date of those usufructuary mortgage deeds, the mortgagors have no right to make an application under Rule 10 of the Rules read with Section 12 of the Act, nor

respondent No. 2 of the cases had jurisdiction to issue notice to the mortgagee for giving up possession or to pass an order to that effect.

11. In the result, all these applications are allowed. The notices, annexure 3 in C. W. J. C. No. 3213 of 1975 and annexure 1 in C. W. J. C. Nos. 370 and 840 of 1976 are quashed. Similarly the proceeding in C. W. J. C. No. 480 of 1976 as prayed for is quashed. In C.W.J C. No. 499 of 1976 the order dated 7th of January, 1976 as contained in annexure 1 is quashed. In the circumstances of the case, there will be no order as to costs.

S. Ali Ahmad, J.

I agree.