

(1945) 11 PAT CK 0008
In the Patna High Court

Kheali Rai and Another

APPELLANT

Vs

Ramphal Kamkar

RESPONDENT

Date of Decision : 26-11-1945

Acts Referred:

Bihar Tenancy Act, 1885 — Section 171A, 174

Citation : AIR 1946 Patna 372

Hon'ble Judges : Fazl Ali, C.J.;Pande, J

Bench : Full Bench

Judgement

Fazl Ali, C.J.—This is an application in revision from an order of the Munsif of Chapra, dated 20th March 1944. In order to elucidate the point raised in this application certain facts may be briefly stated. The opposite party is a tenant of a holding comprising 4 bighas 8 kathas 2 dhurs of khata No. 130 of village Chamaria for which a sum of Rs. 32 is payable as rent. Petitioner 1 is the zarpeshgidar of a portion of this holding and is liable to pay Rs. 9 under the zarpeshgi and petitioners 2 to 4 who are zarpeshgidars for other portions are liable to pay Rs. 8 out of the total rent. It appears that the landlord of the holding obtained a rent decree for arrears of rent for the years 1345 to 1348 and in execution of the decree the holding was sold. After the sale the opposite party deposited a sum of Rs. 176-7-6 and thereupon the sale was set aside. After the sale was set aside, the opposite party asked the Court to apply the provisions of Section 171A Bihar Tenancy Act, in his favour and put him in possession of the zarpeshgied property. This application has succeeded and hence this application in revision. Section 171A reads as follows:

Notwithstanding anything to the contrary contained in any law, when a tenure or holding or portion thereof, mortgaged by tenant, has been advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914, for default of the mortgagee who was liable under the terms of the contract between him and the mortgagor for payment of the arrears of rent for

which the decree or certificate was obtained, and the mortgagor tenant pays into Court the amount requisite to prevent the sale-

(a) the amount so paid by him together with fifty per centum of the said amount by way of compensation shall be deemed to be a debt due from the mortgagee, and

(b) the mortgagor shall, on application to the Court executing the decree, be entitled to be put in possession of the tenure or holding or portion thereof by ejecting the mortgagee and to retain possession of it until the debt has been discharged.

2. This section must be read along with Section 174 which is a provision for enabling a certain class of persons including a judgment-debtor to apply for setting aside the sale of a holding for arrear of rent on depositing within thirty days from the date of the sale the amount recoverable under the decree with costs together with a sum equal to 5 per cent. of the purchase money. On comparing the language of the two sections, it seems clear that Section 171A is applicable when the deposit is made before the sale, whereas Section 174 is intended to cover cases when the deposit is made after the sale. If the deposit is made before the sale and after the properties are advertised for sale and also if the holding is in the possession of the mortgagee and it appears that the sale has taken place owing to his default then the mortgagor is entitled to be put in possession of the holding by ejecting the mortgagee and to retain possession of it until the debt has been discharged. This section therefore is narrower in its application than Section 174 and evidently applies before the sale takes place. Under this section, it is necessary to deposit only the decretal amount with costs and no other sum, whereas u/s 174 over and above the decretal amount a sum equal to 5 per cent. of the purchase money has to be deposited. Evidently in this case the deposit was made u/s 174 because it included not only the decretal amount, but also the amount which was payable to the auction purchaser. Strictly speaking therefore Section 171A was not applicable to the facts of the present case.

3. It was contended that in any event the deposit was made to save the property and Section 171A ought to be liberally construed. It was further contended that the Legislature must have intended that Section 171A should cover a case of the present description. In my opinion this case cannot be brought u/s 171A without stretching the language of that section which we are not permitted to do. It was open to the Legislature to make Section 171A applicable to a case like the present, but that has not been done.

4. The order of the Court below seems to me to be incorrect and I would therefore allow this application and set aside the order under revision and also dismiss the original application of the respondent by which he claimed possession of the property which is in possession of the zarpeshgidar. The petitioner will be entitled to his costs. Hearing fee is assessed at one gold mohur.

Pande, J.

I agree.