

(1935) 01 PAT CK 0037
In the Patna High Court
Case No : Civil Revn. No. 557 of 1934

Madhuri Jha and others

APPELLANT

Vs

Awadh Chaudhury and others

RESPONDENT

Date of Decision : 30-01-1935

Acts Referred:

Citation : (1935) 01 PAT CK 0037

Judgement

Wort, J.—This Rule is directed against the order of the Munsif of Madhubani rejecting an application under O. 21, R. 100, Civil P.C. In the mortgage action one of the two lessees of the property was joined as a party, but the petitioners before this Court were not so joined. An application having been made under the rule and order to which I have referred the learned Judge has come to the conclusion that the only right that the petitioners had was to redeem. It is denied that the learned Judge's decision on this question is wrong. The question that the learned Judge had jurisdiction to consider under O. 21, R. 100 was not what the petitioners rights were as regards the mortgage, but whether they were persons in possession of the property on their own account or on account of some person other than the judgment-debtors under R. 101.

2. The only difficulty that I have in determining the question is whether in the circumstances I should interfere in revision. It is said that it was a pure question of law which the Judge had jurisdiction to decide and therefore this Court would not interfere. But in my view whatever the ultimate rights of the petitioners would be the learned Judge did not exercise his jurisdiction in the sense that he did not consider the question and the only question that he had to consider in the case. It may be said, as Mr. Rai argues, that the facts of the case were admitted; but it does sufficiently appear from the record of the case that there is some doubt as to what the actual position of the petitioners was whether they had a lease of the whole of the property or part, what was the extent of his lease and so on. The learned Judge on a further consideration of the matter may come to the conclusion that the petitioners were not person's who were in possession on their own behalf, and that is a matter which he has jurisdiction to decide and

with which this Court will not interfere, but this question so far he has not decided. For that reason in my judgment the case must go back to be heard and determined according to law, the Rule being made absolute. The costs of this application will abide the result of the hearing in the Court below: hearing fee two gold mohurs.