

(2020) 06 PAT CK 0054

In the Patna High Court

Case No : Miscellaneous Appeal No.622 of 2018

Rajeev Ranjan Prakash And Others

APPELLANT

Vs

Seema Devi Wife And Others

RESPONDENT

Date of Decision : 08-06-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 144, Order 39 Rule 1, Order 39 Rule 2

Citation : (2020) 06 PAT CK 0054

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : J.S. Arora, Manoj Kumar, Gaurav Pratap, Aishwarya Shree, Pandit Jee Pandey, R.P. Tripathi

Final Decision : Dismissed

Judgement

S. Kumar, J

Heard learned counsel for the parties.

This miscellaneous appeal has been filed for setting aside the judgment and order dated 18.6.2018 passed by learned Sub- Judge- VI Danapur, Patna passed in Title Suit No. 33 of 2015 by which application filed by plaintiff/appellant under Order 39 Rules 1 2 for grant of temporary injunction has been rejected.

Plaintiffs have filed a suit being Title Suit No.33 of 2015 for declaration of their title and confirmation of possession over the suit land as detailed in Schedule 1, 2, 3 and 4 of plaint and want of Title of defendants.

Plaintiffs have stated in the plaint that land and house measuring 3 kathas appertaining to plot no.670, khata no.167 (Schedule 1 of the plaint), situated at Mauza Jalalpur, P.S. Danapur, District, Patna was owned and possessed by Smt. Bageshwar Devi, mother of the plaintiffs and after her death, same devolved upon plaintiff nos.1 to 4 and said properties were purchased from Mahtab Rai and Mahendra Singh, through registered sale deed dated 21.11.1986 and

12.11.1987.

Similarly land and house measuring 4 kathas appertaining to plot no.670, Khata No.167 (Schedule 3 of the plaint) situated at Mauza- Jalalpur, P.S. Danapur, District Patna is owned and possessed by plaintiff no.5 who had purchased it from Ram Pari Devi and Mahtab Rai through registered sale deeds dated 23.11.1986 and 12.11.1987.

Vendors who sold the properties to plaintiffs had purchased said properties from Md. Ilias, through two registered sale deeds dated 24.7.1985.

It is further stated that in February 2012, attempt was made to dispossess plaintiffs in their absence by respondents along with Nazir of Civil Court and their boundary wall was demolished and on enquiry, it was learnt that same was pursuant to order passed by civil court for delivery of possession in execution case No.13 of 2005 (arising out of T.S. (redemption) No.35 of 2000.

Ambika Singh, father-in-law of Seema Devi, defendant no.1, owned and possessed apart from other lands, 1 bigha 16 dhurs of land in plot no.118/670, khata no.167.

Said Ambika Singh executed a registered usufructory Mortgage deed dated 24.7.1969 in favour of Sheikh Mohammad Shaukat for a total consideration of Rs.6,500/- for a period of five years and mortgagee came in possession over mortgaged land. Money suit no.7 of 1976 was filed by Md. Shaukat (mortgagee) for realization of Rs.6,500/- on the ground that he was never put in possession over the mortgaged land which was decreed ex parte on 30.4.1976 and same was executed through execution case no.11 of 1976. In said execution case, plot nos. 118/670 (part of mortgaged land) were also auctioned sold and Md. Ilias purchased it. The sale was confirmed. Sale certificate was issued and he was put in possession through process of court. Said auction purchaser/ Md. Ilias sold the entire land to different persons including vendor of plaintiffs.

It is further revealed that Ambika Singh in the year 1982 filed title suit being T.S. No.143/1982 for declaration of his title and for setting aside the decree passed in Money Suit No.7 of 1976 and auction sale dated 15.12.1977 which took place in Execution Case No.11 of 1976 and same was decreed by the trial court, however, it is submitted on behalf of the present plaintiff that he did not get the mortgaged properties redeemed nor any proceeding was initiated for restitution under Section 144 of Code of Civil Procedure to recover the possession and plaintiffs remained in possession over their purchased land.

Ambika Singh filed a suit for redemption in the year 2000 being redemption suit no.35 of 2000 without impleading plaintiffs as a party in said suit, although they were in possession over the suit properties and behind their back, plaintiffs got a decree in said title redemption suit no. 35 of 2000 and thereafter Execution Case No.13 of 2005 was filed against Sheikh Mohammad Shaukat and Md. Ilias only in which they are sought to be dispossessed.

Plaintiffs/ appellants filed a petition dated 4.6.2018 for grant of temporary injunction not to dispossess them in execution case no. 13 of 2005 (arising out of T.S. (Redemption) No.35 of 2000) during pendency of present title suit , which was rejected by the impugned order.

Defendant no.1 in her written statement has stated that plot no.118/670 of khata no. 167 measuring 1 bigha 16 dhur belonged to late Ambika Singh (father-in-law of defendant no.1). On 24.7.1969 Ambika Singh executed usufructory mortgage in favour of Sk. Md. Shaukat, son of Sk. Abdul Sartar. For realization of mortgage money, money suit no.7 of 1976 was filed by mortgagee Sheikh Md. Shaukat on the ground that pursuant to usufructuary mortgage deed, he was not put in possession over the mortgaged land and same was decreed ex parte on 30.4.1976 and execution case no.11 of 1976 was filed for execution of ex parte decree in which above mortgaged lands were auctioned sold which was purchased by Md. Ilias.

In the year 1982, mortgagor Ambika Singh filed title suit no.143/1982 for setting aside aforesaid ex parte decree as well as auction sale and for declaration of his title over the mortgage lands and same was decreed and ex parte decree as well as auction sale was set aside by order dated 22.8.1986.

The trial court in title suit no.143 of 1982 in its judgement and decree dated 22.8.1986 held as follows:-

"It is hereby declared that the decree obtained in money suit no.7 of 1976 dated 30.4.1976 of the court of Sub-Judge-II, Patna is void, fraudulent and not enforceable at all and the same is hereby set aside. The consequences flowing from the said decree namely sale deed dated 15.12.1977 in execution case no.11 of 1976 of the court of Sub-Judge-II, Patna is also declared as void as the same has created no title in respect of mortgaged lands described in Schedule 1 of the plaint in favour of defendant no.2."

In the year 2000, title suit no.35 of 2000 was filed by mortgagor Ambika Singh for redemption of mortgaged lands against defendants mortgagee Md. Shaukat and auctioned purchaser Md. Ilias which was decreed on 23.7.2005 on contest.

Against said judgement and decree, mortgagee filed first appeal and second appeal and all were dismissed.

It has been further submitted on behalf of defendant no.1 that for similar relief, one Laxmi Pd. Sahu, who was also purchaser from Md. Ilias, had filed title suit which was also dismissed.

It has been submitted that on the date of execution of sale deed, Md. Ilias was party in the suit who sold the lands to the vendors of plaintiffs by registered sale deed on 24.7.1985 and as such, said transaction was hit by lis Pendens and plaintiffs purchased the same on 23.11.1986 and 12.11.1987 when their vendors had no title over the land and their possession is through mortgagee and the maxim once a mortgage always a mortgage equally applies.

After hearing the parties and considering the materials available on record, this Court does not find any error or infirmity in the order passed by the trial court. Accordingly, the present miscellaneous appeal is dismissed.