
(1937) 11 PAT CK 0070
In the Patna High Court

Ram Lal Jha Another

APPELLANT

Vs

Thakur Das and Another

RESPONDENT

Date of Decision : 26-11-1937

Acts Referred:

Bihar Tenancy Act, 1885 — Section 171

Citation : AIR 1938 Patna 94

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—The petitioner, as the holder of a mortgage of a part of a holding, deposited the amount which had been decreed against) the recorded tenant in a suit for rent at the instance of the landlord. Possession was delivered to him in accordance with the provisions of Section 171, Bihar Tenancy Act. After possession had been delivered to him, the judgment-debtor filed a petition offering to deposit the amount which had been paid by the present petitioner less the amount which the judgment, debtor claimed that the petitioner should have paid as his share of the rent and less the price of crops which the judgment. debtor alleged the petitioner had reaped while in possession. The Court below, on this application, directed the judgment debtor to be put back into possession on payment of the decrals amount less the amount claimed as the present petitioner's share of the rent and less the price of the crops which the court assessed at Rs. 3 per bigha. It may be observed that the court. Arrived at this figure without any evidence. Whatsoever. Indeed it was expressly stated in the judgment that there was no evidence on the record to show what the actual produce of the land was. In these circumstances it was wholly wrong for the court to fix arbitrarily the rate of Rs. 3 per bigha as the price of the crop. That however is not a matte of very great importance in this case which raises more important issues.

2. It is abjected by the petitioner that after possession had been delivered to the petitioner had been delivered to the petitioner the court was functus officio and

had no jurisdiction to entertain an application by the judgment debtor to be put back into possession. It is contended that Section 171 creates a statutory mortgage in favour of the encumbrancer who makes only way in which the mortgagee can be compelled to give up possession is in execution of a decree obtained against him in a regular suit on the mortgage.

3. With the assistance of the learned advocates of both sides I have examined the cases on this question and find that there is no reported instance of a judgment-debtor who has been dispossessed u/s 171 having been put back into prosecution on an application made to the court. Whether the court has jurisdiction to entertain such and application is one about which therefore considerable doubt must be entertained. But the petitioner must in my opinion succeed on another ground.

4. Section 171 provides that when a person having an interest voidable on the sale of a holding has deposited the amount required to prevent the sale the amount so paid by him shall be deemed to be a debt bearing interest at 12 per cent per annum and that he shall be entitled to retain possession of the holding until the debt with the interest due thereon has been discharged.

5. Now it is clear in this case that what the judgment debtor deposited was not the amount paid by the mortgagee to prevent the sale but a lesser sum arrived at after deducting from the amount deposited by the mortgagee the amount which the judgment-debtor claimed to be due from the mortgagee himself and the price of the crops assessed by the court below. It was contended by the learned advocate for the opposite party that this was a sufficient compliance with the with section. To my mind the language of the section is too clear to admit of the construction sought to be put upon it by the learned advocate, for the opposite party. The section quite explicitly states that it is the; amount deposited to prevent the sale which shall; be deemed to be a debt from the decree-holder to the person making the deposit and that it is, only on repayment of this debt that the judgment-debtor shall be entitled to regain possession. As this amount has not been deposited in the present case, I set aside the order of the Court, below and direct that the petitioner be put by into possession of the holding.

6. It may be that this result is not what was in the contemplation of the Legislature in enacting Section 171 of the Tenancy Act, but, I must take the intention of the Legislature to be what can be gathered from the language of the statute and I am unable to place on that language any other construction than is indicated above.

7. The petitioner therefore succeeds and is entitled to his costs. Hearing fee one gold mohur.