(1992) 12 PAT CK 0029

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2836 of 1983

Smt. Ramsamari Devi APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 09-12-1992

Acts Referred:

Bihar Money Lenders Act, 1974 — Section 12
Transfer of Property Act, 1882 — Section 12, 31, 54

Citation : (1993) 1 PLJR 503

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : Lalit Kishore, for the Appellant; D.N. Yadav and P.N. Chaudhary for the State and M/s. I.T. Gaur, S.C. Jha and S. Khalil, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—The present writ application has been filed for issuance of a Writ in the nature of certiorari or any other appropriate writ, order or direction quashing the orders, contained in Annexures 1, 2 and 3 to the writ petition, passed by respondent nos. 2, 3 and 4 respectively, on an application filed u/s 12 of the Bihar Money Lenders Act (hereinafter referred to as ''the Act'') read with rule 10 (2) of the Rules framed thereunder, by the petitioner, being a purchaser of the mortgaged land. In short, the case of the petitioner is that on 21.7.1970 a deed of usufructuary mortgage was executed by one Birendra Singh in favour of Smt. Shanti Devi mortgaging land bearing Plot Nos. 554 and 552 appertaining to Khata Nos. 11 and 7, having an area of 52 and 23 decimals respectively situated in Village Rauna, P.S. Konch, for an advance of Rs 2,000/-. Thereafter the mortgagee (respondent no. 6) was put in possession of the said land. On 21.7.74/24.9.74 the petitioner purchased the said land by a registered tale deed after paying consideration money to the aforesaid mortgagor. After the expiry of statutory period of seven years since the date of execution of the mortgage bond, the petitioner, being purchaser and having derived title and interest, filed an application u/s 12 of the Act read with rule 10 (2) of the Rules for recovery of possession of the land in question. The same was registered as Money Lenders Case No. 25/78-79 and notice was issued to the parties. The mortgagee (respondent no. 6) appeared and raised objection. The Anchal Adhikari, Konch (Respondent no. 5) by his order dated 1.11.1978, rejected the application filed by the petitioner holding that he was not the mortgagor and thus, the aforementioned provisions of the Act and the Rules were not applicable. Against this order the petitioner preferred an appeal before the Deputy Collector, Land Reforms, Gaya, which was numbered as M.L.A. No. 6/78-79 / 8/79-80. The said appeal was dismissed on 22.4.1980 (Annexure 3), against which the petitioner preferred a revision, being Revision Case No. 8/80-81, before the District Magistrate, Gaya (respondent no. 3) which was also dismissed by order dated 5.3.1981 (Annexure 2). Thereafter the petitioner preferred another revision before the Commissioner, Patna Division. The said revision was subsequently transferred to the Commissioner, Gaya Division, which was registered as Revision Case No. 72-81 /109/81. The said revision was also dismissed by order dated 16.3.1983 / 20.4.1983 (Annexure 1). Against this order and the orders contained in Annexures 2 and 3 to the writ petition, the petitioner filed the present writ application, as already stated above.

2. A counter affidavit has been filed on behalf of respondent no. 6. The main contention in the said counter affidavit appears to be that the petitioner has not yet paid the full amount of the consideration money to the mortgagor of respondent no. 6 which was fixed at Rs. 11,500/- as he has paid only Rs. 9,500/- out of the said total amount and kept Rs. 2,000/- for paying the mortgage money to respondent no. 6, as such, the terms and conditions of the sale deed are still to be fulfilled which makes the sale transaction incomplete. Accordingly, it has been contended that the petitioner did not acquire any right or title as he failed to fulfil the terms and conditions.

3. Mr. Lalit Kishore, Learned Counsel appearing for the petitioner, submitted that the sale deed having been executed in favour of the petitioner by the mortgagee, he became the purchaser and title passed to him and, accordingly, he stepped into the shoes of the predecessor in title irrespective of the fact that one of the conditions of sale for payment of balance amount of consideration money of Rs. 2,000/- to the mortgagee had not been fulfilled and because of which he did not come in possession. Accordingly, he submitted that the petitioner has the same right as was available to his predecessor and the impugned orders which are solely based on the aforementioned grounds are ultra vires, void and illegal. According to the Learned Counsel, unless there is a clear stipulation in the deed itself that title would pass only after complying the conditions mentioned therein the title passes. In the present case there being no such condition, the title passed to the petitioner and the respondents authorities have erred in law in holding that since the petitioner did not come in possession as the balance amount of consideration money had not been paid to the mortgagee, the title did not pass as the transaction was incomplete. Learned Counsel in support of the submissions referred to section 54 of the Transfer of Property Act (hereinafter

referred to as ''the T.P Act'') wherein ''Sale'' has been defined to mean that a transfer of ownership in exchange for a price paid or promised or part paid and part promised. Thus, it has been contended that simply because the consideration has not been paid it cannot be said than title did not pass. He further submitted that in the facts and circumstances of the present case, it cannot be said that the sale was not absolute as the unfulfilled condition in this sale deed only related to possession and not the title.

4. Further, according to the Learned Counsel, the failure to make payment of the balance amount to the mortgagee will not exclude the right of the Court to give relief to the purchaser u/s 12 of the Act. In support of this, Learned Counsel relied on a decision reported in 1935-36 Indian Appeals (Vol. 63) 26 (Devendra Prasad Sukul and others v. Surendra Prasad Sukul and another). The said case related to the contract of sale and the act of transfer which were embodied in the sale deed of the mortgaged property. The sale deed stipulated a condition that if the sum due had not been met by the purchasers by a definite date and the consideration money remained with them, the sale deed should be cancelled and null and void. The court held that aforementioned clause is to be regarded as an integral condition of the contract of sale, providing the date of completion of the contract by satisfaction of the balance of the contract price. It was further held that the statement in the deed that the vendor has already received the entire consideration money cannot be taken literally so as to contradict the clear fact that the balance of the price had not been paid to the Vendor himself, but was to be paid thereafter to his creditors by the date prescribed. Their Lordships further held that there is nothing in section 31 of the T.P. Act which merely declares that a limitation upon a condition subsequent is a lawful method of grant, to exclude the right of the Court to give relief to the purchaser who fails to make payment of the price, or part thereof, by the date agreed upon in the contract of sale.

5. Mr. Kishore further submitted that the law is settled that purchaser of equity of redemption comes within the definition of the mortgagor and an application u/s 12 of the Act for recovery of possession at his instance is maintainable. Reference in this regard was made to a Full Bench decision of this Court reported in Dorik Mahto and Another Vs. State of Bihar and Others, .

6. On the other hand, Mr. I.T. Gaur, Learned Counsel for respondent no. 6, submitted that the petitioner could not be said to have stepped into the shoes of his predecessor as he did not fulfil the terms and conditions of the sale deed and, thus, they cannot claim redemption u/s 12 of the Act. Further, Mr. Gour, submitted that as respondent no. 6 does not possess any land she is protected under Government Notification No. 207 dated 13.2.1981 for redeeming the mortgaged land without receiving the mortgage money as all such mortgagees land holders holding land up to 5 acres are exempted from the operation of section 12 of the Act. However, Learned Counsel has not produced the copy of the aforesaid Government notification in support of his submission and, therefore, I do not feel inclined to entertain such a plea without looking to the

Government notification in this regard. Morever Learned Counsel has not even pointed out as to under what provision of law the Government issued such a notification.

7. The learned Government Pleader No. II appeared on behalf of the State submitted that the scheme of the Act is to grant relief to the debtor/mortgagor in the State of Bihar and not to the purchaser.

8. In my view, the decision in the case of Devendra Prasad Sukul (supra) is not of much help to the petitioner as in the said case the question was not involved as to whether if the title had passed to the purchaser even in view of the incomplete transaction he could claim possession. From the order of the Commissioner, as contained in Annexure 1 to the writ petition, it appears that the sole ground for rejection of the application filed by the petitioner u/s 12 of the Act is that the condition in the agreement that the purchaser would come in possession of the land in question only after payment of the consideration money of Rs. 2,000/- to the mortgagee and the said condition having not been fulfilled, the title did not pass in favour of the petitioner-purchaser as, according to him, the transaction was incomplete.

9. In view of the provisions contained in section 12 of the Act it is difficult to accept the submission made on behalf of the petitioner that failure to make payment of the balance amount to mortgagee will not exclude the right of the Court to give relief to the purchaser. The provision contained in section 12 of the Act is usefully quoted hereunder :--

12. Usufructuary mortgages and their redemption.--Notwithstanding anything to the contrary contained in law or anything having the force of law or in any agreement, the principal amount and all dues in respect of an usufructuary mortgage relating to any agricultural land, whether executed before or after the commencement of this Act, shall be deemed to have been fully satisfied and mortgage shall be deemed to have been wholly redeemed on expiry of a period of seven years from the date of the execution of the mortgage bond in respect of such laud and the mortgagor shall be entitled to recover possession of the mortgaged land in the manner prescribed under the rules:

Provided that if the mortgage bond had been executed before the commencement of this Act nothing in this section shall entitle the mortgagor to claim any accounts or profits from the mortgagee by the reason of the benefit of redemption of the mortgage under this provision.

From reading of the said provision it is clear that on expiry of the period of seven years from the date of execution of the mortgage bond in respect of an usufructuary mortgage relating to any agricultural land, whether executed before or after the commencement of the Act, the mortgagor shall be entitled to recover possessions of the mortgaged land in the manner prescribed under the rules.

10. I therefore, hold that for recovery of possession even if the purchaser

stepped into the shoes of the mortgagor, he cannot maintain a petition u/s 12 of the Act unless he becomes entitled to come in possession of the land inasmuch as the question of recovery of possession would only arise if the purchaser is entitled to come in possession on purchase of the land in question from the mortgagor. In the present case, it is not in dispute that the petitioner was not put in possession in view of non-fulfilment of one of the conditions incorporated in the sale deed as he had not paid the balance consideration money of Rs. 2,000/- to the mortgagee. It is well settled that a thing which cannot be done directly cannot be permitted to be done indirectly. If the petitioner could not legally come in possession before the payment of balance consideration money of Rs. 2,000/- he could not be allowed to claim redemption before he fulfils the condition of the sale deed for coming in possession. In that view of the matter, I do not find any merit in the writ application and, accordingly, the application is dismissed. However, in the facts and circumstances, there will be no order as to costs.

