

MANU/BH/0086/1962

Equivalent Citation: AIR1962Pat332

**IN THE HIGH COURT OF PATNA
FULL BENCH**

A.F.O.D. No. 465 of 1957

Decided On: 26.03.1962

Appellants:**Anup Singh**
Vs.

Respondent:**Ajodhya Prasad and Ors.**

Hon'ble Judges/Coram:

Vaidynathier Ramaswami , C.J., Kamla Sahai and Kanhaiya Singh , JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: J.C. Sinha and Bimal Bhusan Sen, Advs.

For Respondents/Defendant: A.B.N. Sinha, Kedarnath Verma, Ramnandan Prasad I and Braj Krishna Prasad, Advs.

JUDGMENT

1. This appeal is presented on behalf of the decree-holder against the order of the Additional Subordinate Judge of Patna, dated the 20th August, 1957, refusing to grant a decree under Order 34, Rule 6, of the Code of Civil Procedure. It appears that on the 9th February, 1945, the respondents executed a mortgage bond for a sum of Rs. 15,000/- in favour of the appellant with regard to certain milkiat properties. The appellant brought a mortgage suit, No. 117/93 of 1950, for enforcing the mortgage. On the 4th February, 1954, a preliminary decree was granted by the learned Subordinate Judge for sale of the mortgaged properties. A final decree was passed on the 15th September, 1955.

While the execution case was pending there was a notification under Section 3 of the Bihar Land Reforms Act, dated the 1st January 1956, by which all the milkiat properties, which were the subject-matter of the mortgage became vested in the State Government. On the 28th May, 1956, the execution case was dismissed on account of the bar imposed by Section 4(d) of the Bihar Land Reforms Act. Subsequently the decree-holder filed an application to the court for grant of a personal decree under Order 34, Rule 6 of the Code of Civil Procedure. The application was dismissed by the Additional Subordinate Judge on the 20th August, 1957. This order is the subject-matter of the appeal which has been presented in the High Court.

2. When the matter was heard before the Division Bench the question arose whether the mortgagee-decree-holder is entitled to a personal decree without first complying with the provisions of Rules 4 and 5 of Order 34 of the Code of Civil Procedure. It was argued before the learned Judges of the Division Bench on behalf of the respondent-judgment-debtors that the mortgage security has been substituted by the compensation available to the intermediary under the Bihar Land Reforms Act and, therefore, the decree-holder is not entitled to a personal decree under Order 34, Rule 6, of the Code of Civil Procedure, until compensation money is utilised for the

satisfaction of the mortgage debt, either wholly or in part. On behalf of the decree-holder appellant the contention was put forward that the security was not available and, therefore, the procedure of complying with Rule 5 of Order 34 was an idle formality. In view of the conflict of authorities on this point, the learned Judges of the Division Bench have referred the matter for being decided by a Full Bench.

3. In the order of reference the question for decision by the Full Bench has been formulated as follows:

"If the mortgage security is not available, say, for instance, it was destroyed or compulsorily sold, or, as is the present case, vested in the State, should the decree-holder comply with the provisions of Rule 5 of Order 34 of the Civil Procedure Code before applying for a personal judgment under Rule 6 of Order 34 of the Code?"

4. After hearing learned counsel for both the parties we think that the question referred to the Full Bench should be reframed in the following manner so as to bring out the real point in controversy between the parties:

"Whether in the circumstances, of this case the decree-holder should proceed first under Section 14 of the Bihar Land Reforms Act before applying in the civil court for a personal judgment under Order 34, Rule 6, of the Code of Civil Procedure?"

5. Our task in this case has been simplified to a great extent because the precise point arising in the present case has been the subject-matter of consideration by the Supreme Court in a recent case, *Krishna Prasad v. Smt. Gouri Kumari Devi*, (Civil Appeal No. 352 of 1959, D/- 5-3-1962 (SC)). It should be noticed that the material fact in the present case is that all the milkiat properties which formed the subject matter of the mortgage transaction have been notified under Section 3 of the Bihar Land Reforms Act and they have vested in the State Government under the provisions of that Act. Similarly, in the Supreme Court case the properties covered by the mortgage deed comprised only the milkiat interest which became vested in the State Government by a notification under the Bihar Land Reforms Act.

On behalf of the appellant it was pointed out that in the Supreme Court case there is a distinguishing feature because the decree-holder in that case had applied to the claims Officer notifying his claim under Section 14 of the Bihar Land Reforms Act, and in fact the Claims Officer determined what was the sum due to the decree-holder payable out of the compensation amount in regard to the properties mortgaged. It is said that in the present case the decree-holder appellant has not as yet applied under Section 14 of the Bihar Land Reforms Act. But in our opinion this distinguishing feature is not really material, and the principle laid down by the Supreme Court in Civil Appeal No. 352 of 1959 D/- 5-3-1982 (SC) must be applied to the present case.

6. The decision of the Supreme Court is that in the circumstances similar to those arising in the present case the decree-holder is not entitled to apply for a personal decree under Order 34, Rule 6, of the Code of Civil procedure unless he has first sought his remedy under Section 14 of the Bihar Land Reforms Act and made a claim for the satisfaction of the amount due to him from the compensation amount payable to the respondent-judgment-debtors. This is the ratio decidendi of the Supreme Court decision, and for the reasons elaborately set out by Gajendragadkar, J. in that judgment, we hold that in the circumstances of the present case the decree-holder appellant should proceed to avail himself of the remedy under Section 14 of the Bihar

Land Reforms Act before he applies to a civil Court for a personal decree under Order 34, Rule 6, of the Code of Civil Procedure.

7. Let this case now go back to the Division Bench for being dealt with in accordance with our answer to the question" of law formulated for our decision and reframed by us.

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