

In the court of Addl. Sessions Judge-II, Begusarai
Presiding Judge: Brajesh Kumar Singh

Title Appeal No-42/2010

Order

20.07.2026

Appearances:- Sri Ranjan Kumar Prasad, Ld. Counsel for the appellants
Sri Shilakant Manvansh, Ld. Counsel for the O.P No-3 to 6.
Sri Ram Krishna Singh, Ld. Counsel for the O.P No-1 & 2.

1. Today, a new vakalatnama in favour of Sri Shilakant Manvansh has been preferred on behalf of O.P No-3 to 6. The vakalatnama is taken on the records. From today onwards, Sri Shilakant Manvansh would be acting for O.P No-3 to 6.

DEVELOPMENTS SO FAR IN THIS APPEAL AND THE TASK AT HAND

2. The appellants are the plaintiffs, who filed the suit for redemption of the mortgage before the trial court. Ld. trial court has dismissed his suit, and being aggrieved, the appellants-plaintiffs have filed this appeal. As informed by Ld. Counsel for the appellants and O.P No-1 & 2 that between their clients, the compromise has already taken place, and the compromise has been kept on records. However, the O.P No-3 to 6 have not accepted the terms of the compromise, and are contesting this appeal. This is important to note that O.P No-3 to 6 were defendant no-3 to 6 in the lower court, and despite the notice, they chose not to appear, therefore, the suit was proceeded ex-parte against them. This is also important to note that O.P No-3 to 6 have never preferred an application for setting aside the decree under Order IX Rule 13, nor preferred any appeal against the impugned judgment. In this appeal, O.P No-3 to 6 are contesting this appeal on merit simply as respondents. Since, O.P No-3 to 6 have waived their right implicitly by not preferring application for setting aside ex-parte or by preferring any appeal, therefore, they would be precluded from rising those points that they were not heard during the suit, and also they would be barred from raising the separate grounds of appeals. In other words, O.P No-3 to 6 would be allowed to defend the impugned order. It is pertinent to say that Sri Shilakant Manvansh, Ld. Counsel for O.P-3 to 6 has concurred to restrict his arguments on merit.
3. It is further pertinent to mention that though the agreement between the appellant, and the O.P No-1 & 2 have allegedly been arrived at, yet the said compromise/agreement was never made the part of any order/judgment. Therefore, it is incumbent on the court to see whether

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the agreement/compromise is executed as per the provisions of law under Order XXIII, Rule 3 of C.P.C or not.

4. Ld. counsel for the appellants has further pleaded that apart from reliefs against O.P No-1 & 2, they have sought reliefs against O.P No-3 to 6 as well in the plaint. Per contra, Ld. Counsel for O.P. No-3 to 6 has submitted that the plaintiff/appellant have sought the relief exclusively against O.P No-1 & 2. As per Ld. Counsel for the O.P No-3 to 6, despite no explicit relief against O.P No-3 to 6, the interests of O.P No-3 to 6 are being affected because of the impugned decree and judgment. It is noticeable that despite the impugned decree and judgment is affecting the rights of the O.P No- 3 to 6, they have not preferred appeal against decree and judgment. Nevertheless, as per O.P No-3 to 6, they are contesting this appeal vehemently on merits. Let the Ld. Counsels for all the three (3) parties, i.e. of appellants, O.P No-1 & 2, and O.P No-3 to 6 argue their respective cases on merits. Let the arguments be advanced on behalf of the appellants as to how the appeal is maintainable against O.P No-3 to 6, and what are the grounds of appeal. Let the Ld. counsels for the appellants as well as O.P No-1 & 2 argue that as to how the compromise between the appellant, and O.P No-1 & 2 are valid, even though, O.P No-3 to 6 aren't part of the alleged compromise. Let the Ld. Counsel for the O.P No-3 to 6 restricts his arguments on merits as to non-sustainability of the appeal.
5. Put up this case on 27.07.2026 for arguments. Let all the counsel remain physically present.

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(Brajesh Kumar Singh)
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