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C.A.No. 137 OF 1996  
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ITEM No.102 COURT No.10 SECTION XVII@@  
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S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No.137 of 1996.@@  
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HRIDAY NARAIN CHOUDHARY Appellant

VERSUS

SHYAM KISHORE SINGH & ORS. Respondents

Date : 01/03/2001 This Appeal was called on for hearing today.@@  
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CORAM :  
HON'BLE MR. JUSTICE D.P. MOHAPATRA  
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Appellant (s) Mr. S.B. Sanyal, Sr. Adv.@@  
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Mr. Akhilesh Kumar Pandey, Adv.

For Respondent (s) Mr. H.L. Agarwala, Sr. Adv.@@  
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Mr. Krishna Pal Singh, Adv.

UPON hearing the counsel the Court made the following  
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The appeal is allowed in terms of the Signed Order.  
Parties to bear their respective costs.

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(Subhash Chander) (S. Malkani)  
Court Master Court Master

[Signed Order is placed on the file]

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CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.137 OF 1996@@  
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Hriday Narain Choudhary .....Appellant

Versus

Shyam Kishore Singh & Ors. ....Respondents

O R D E R@@  
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The result of this appeal turns on the interpretation of the notification No.S.O.207 dated 13th February 1981 issued by the Government of Bihar under Section 12 of the Bihar Money Lenders Act, 1974 (Bihar Act 22 of 1975) (hereinafter referred to as 'the Act') and its interaction with the relevant provisions of the Act.

The appellant filed the suit seeking a declaration that he is entitled to retain possession of the mortgage property till mortgagors repay the loan and for other consequential reliefs. The case of the plaintiff, shorn of unnecessary details, was that the suit land was mortgaged with him by the predecessor-in-title of the respondent under three deeds of usufructuary mortgage executed on 26th of July 1974 and 4th of November, 1974. The total area of land covered under the three documents as stated by Shri Sanyal, learned senior counsel for the appellant, is 3.12 acres. The further case of the plaintiff was that he was entitled to exemption from the purview of Section 12 of the Act under the notification dated 13th February, 1981 since the total land held by him was less than 5 acres. He placed reliance on the oral and documentary evidence placed on record including Exh.3 which, according to him, was a document of family arrangement.

The case of the defendant on the other hand, was that the land-holding of the mortgagee was more than 5 acres; therefore he was not entitled to exemption under the notification referred to above. It was the contention of the defendant that Section 12 of the Act was applicable in the case and 7 years from the date of the mortgage having elapsed, the mortgages stand automatically redeemed and he was entitled to recover possession of the property.

Before considering the case of the parties on merit, it will be convenient to quote the relevant provisions of the Act. Section 12 of the Act is quoted hereunder :

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"12. Usufructuary mortgages and their@  
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redemption.- Notwithstanding anything to the@  
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contrary contained in any 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 the 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 land 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.

Explanation - Nothing in this section shall be construed to confer a right of effecting usufructuary mortgage of land on persons who do not possess transferable rights in such land."

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Under Section 3 of the Act, power is vested in the State Government to exempt by notification any class of money lenders or any class of loan in the whole or any part of the State of Bihar from operation of all or any of the provisions of the Act. The notification dated 13th February, 1981 was issued in exercise of the power under Section 3 of the Act. The relevant portion of the notification reads :

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"Now, therefore, in exercise of the powers conferred by Section 3 of the said Act, the State Government is pleased to exempt all such mortgagee land-holders holding land not more than seven acres (equivalent to 2.8329 hectares) in North and South Chotanagpur Divisions and district of Santhal Parganas and five acres (equivalent to 2.0235 hectares) in other parts of the State, and who advance loans on usufructuary mortgage of agricultural land from the operation of Section 12 of the said Act from the date of publication of this notification in the Bihar Gazette."

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The trial Court, on appreciation of the oral and documentary evidence led by the parties, held that the plaintiff was entitled to the exemption under the notification. However, the Court dismissed the suit on the ground of non-compliance with the mandatory provisions of the Act.

On appeal by the plaintiff, the lower appellate Court reversed the judgment of the trial Court and decreed the suit holding, inter alia, that the plaintiff is entitled to the exemption provided under the notification since his land-holding is less than 5 acres and therefore, the defendant is not entitled to claim automatic redemption of the mortgage. The lower appellate Court further held that in view of the undisputed factual position that the mortgage loan had not been paid the plaintiff was entitled to continue in possession of the property.

In the second appeal filed by the defendant-respondent, the High Court set aside the concurrent findings recorded by the Courts below that the plaintiff was entitled to the exemption provided in the Government notification on the finding that the document produced by the plaintiff, purportedly a family arrangement, was in reality a document of

partition in respect of the property valued at more than Rs.100/- and, therefore, was compulsorily registrable. Having not been registered, the document was inadmissible in evidence and could not be looked into. Regarding the other evidence, oral and documentary, lead by the plaintiff in support of the plea that his land-holding was less than 5 acres, the High Court took the view that since the transaction has been reduced to writing, and the document is inadmissible in evidence, oral evidence on the point can not be looked into. On such findings the High Court held that the exemption provided in the Government notification did not help the plaintiff and that the defendant is entitled to the benefit of automatic redemption of the mortgages under Section 12 of the Act. The said judgment is under challenge in this appeal.

We have perused the judgment of the High Court and the relevant portions of the judgments rendered by the lower Courts to which our attention was drawn by learned counsel for the parties. The position of law regarding admissibility of the deed of partition - Exh.3 - as held by the High Court, in our view, is unassailable. The document did require registration and having not been registered, was rightly held to be inadmissible. But that is not the end of the matter. The question whether the other evidence available on record on the point is to be considered, arises for consideration. As noted earlier, the High Court brushed aside such evidence holding that the transaction having been reduced to writing it is the only document which can be looked into and if for any legal impediment it cannot be looked into, other evidence for the said purpose also cannot be looked into. In that respect, the contents of the document have to be looked into to see whether by the document the transfer of shares of the parties is effected or the document is only a memorandum of previous partition which is now reduced to writing as evidence of the same. Therefore, though the document was not available to be looked into for want of registration, if the parties have adduced other evidence to prove the extent of their holding evidence on record was to be considered. In this regard, it is to be kept in mind that the suit is not based on the document - Exh.3 or for enforcement of any right or claim arising under the document. On a plain reading of the judgment of the lower appellate Court, it is clear that the Courts below had not only placed reliance on Exh.3 but had also taken into consideration the other materials on record in support of the plaintiff's case that his hand-holding was less than 5 acres. The High Court was not entitled to disturb the finding of fact recorded by the lower appellate Court on the basis discussed earlier without considering the other relevant evidence available on record. The resultant position is that the conclusion arrived at by the High Court that the exemption provided under the Government notification does not extend to the plaintiff-mortgagee is unsupportable and the judgment unsustainable.

In the result, the appeal is allowed. The judgment passed by the High Court dated 14th of December, 1994 in Second Appeal No.20 of 1993 is set aside and the judgment and decree passed by the lower appellate Court is restored. Parties to bear their respective costs.

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.....J.  
[D.P. MOHAPATRA]

.....J.  
[DORAISWAMY RAJU]

New Delhi.  
March 01, 2001.@@  
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