
(1996) 02 PAT CK 0036

In the Patna High Court

Case No : Criminal Miscellaneous No. 4997 of 1994 (R)

Atma Prasad Singh

APPELLANT

Vs

Jhubal Sah and Others

RESPONDENT

Date of Decision : 28-02-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 482

Citation : (1996) 2 BLJR 1058

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Judgement

Gurusharan Sharma, J.—The first party-petitioner in a proceeding u/s 145 of the Code of Criminal Procedure (hereinafter referred to as "the Code") has filed this application u/s 482 of the Code for quashing the order, dated 25.8.1994 passed by Sri Navratna Kumar, Executive Magistrate, Nagar Utari in Misc. Case No. 857 of 1984, whereby the opposite parties No. 24 to 28 herein have been added as third party to the proceeding.

2. By order, dated 25.11.1994, this Court issued notice to the opposite parties to show cause as to why this application be not admitted and/or, if possible, be not disposed of at the admission stage itself. On service of notice, some of the opposite parties, including opposite parties No. 24 to 28, who were added as third party to the proceeding by the impugned order, appeared, whereas the other opposite parties did not appear. Some of them were reported to be dead and steps for fresh service of notice were taken against those on whom notice could not be served. Two petitions at flags A and B have been filed for expunging the names of the deceased opposite parties No. 5, 11, 13 and 19. The parties agreed that for the purpose of this application, only opposite parties 24 to 28, who have been added as third party to the proceeding in the court below were necessary to be heard and as such, it was proper not to keep this matter pending till the service of notice validly on the other opposite parties, who were not required to be heard in the matter and, accordingly, by order, dated 21.2.1996,

this case has been listed for hearing in admission matter without awaiting the service report of the notice issued on the opposite parties No. 1, 2, 5, 8, 12, 17 and 20 to 23 and with consent of the parties, this application is disposed of at this stage.

3. A petition at flag A has been filed on behalf of the petitioner to expunge the names of the deceased opposite parties No. 11 and 19 and to put a note that they are fully represented by opposite parties 12 and 20 respectively, who are already on record. Another petitioner at flag has been filed by the petitioner to expunge the names of the deceased opposite parties Nos. 5, 11, 13 and 19 and to substitute Parsu Mahato, son of late Bhagwan Mahato in place of the deceased opposite party No. 5, whereas, Jalwa Devi, wife of Dukhi Bhogta, of village and P.S. Ramna, district Garhwa, being the daughter of late Masodi Bhogta has been prayed to be substituted in place of deceased opposite party No. 13, his nephew Bigan Bhogta has been requested to be substituted. The petitioner in spite of his best efforts could not trace out the heirs of late Kalicharan Kumhar, opposite party No. 19. I find that there is some discrepancy in the two petitions referred to above. In the petition at flag A, the deceased opposite parties No. 12 and 20 respectively, whereas in the petition at flag B, one Bihan Bhogta has been mentioned as an heir of the deceased opposite party No. 11 and the heirs of deceased opposite party No. 19 are said to have not been traced out. However, without going into the matter in detail, with consent of the parties herein, who have already appeared, let the names of the deceased opposite parties No. 5, 11, 13 and 19 be expunged and their respective heirs be submitted only for the purpose of this application, without any prejudice to the rights of the parties in this regard in the proceeding. No notice need be issued to the substituted heirs of the deceased opposite parties No. 5, 11 and 13 for the purpose of this application.

4. In the year 1984, on the basis of the report of the Circle Officer, Nagar Utari, a proceeding u/s 145 of the Code was initiated with respect to agricultural lands, wherein the petitioner alongwith the opposite parties No. 29 and 30 were arrayed as the first party and one Bachchu Mahato, father of the opposite party Nos. 24 to 28 alongwith opposite parties No. 1 to 23 as second party. During the pendency of the proceeding, on 26.7.1985, a compromise petition (Annexure 1) between the members of the first party and the said Bachchu Mahato, (one of the members of the second party) father of the opposite parties No. 24 to 28 was filed, whereby out of the lands in the proceedings, plot Nos. 149, 209, 268 and 271 appertaining to Khata No. 30 were released and the name of Pachchu Mahato from among the members of the second party was deleted and the proceeding continued with respect to the remaining lands between the members of the first party and the second party, excluding Bachchu Mahato.

5. Both the parties adduced their oral and documentary evidence and almost towards the conclusion of the proceeding, after long lapse of about nine years, on 14.5.1993, a petition was filed on behalf of the said Bachchu Mahto to add

him as a party to the proceeding. Another petition was filed on 30.4.1994 on behalf of five sons of Bachchu Mahato for being impleaded as parties to the proceeding, By the impugned order, dated 25.8.1994, the learned Magistrate rejected the petition of Baehchu Mahato, but allowed the petition filed by his five sons-opposite parties No. 24 to 28 herein and added them as third party.

6. According, to Mr. Amreshwar Sahay, counsel for the petitioner, the learned Executive Magistrate passed the impugned order mechanically and without applying his mind. No reason has been assigned for adding them as third party to the proceeding, when the lands over which they claim to be in possession were already excluded and released from the proceeding as long back as in the year 1985 and the same were no longer the subject matter of the proceeding. The evidence of the parties had already been closed and the proceeding was as its final argument stage. Mr. Sahay submitted that the opposite parties No. 24 to 28 claimed to have interest only in the lands of Khata No. 30, which were, no doubt, the subject matter of the proceeding in the beginning, but after the aforesaid four plots of Khata No. 30 were excluded/released from the proceeding in the year 1985 and they being not interested in other lands, which are at present the subject matter of the proceeding, they have neither any cause of action, nor locus standi to be impleaded as a party to this proceeding and, therefore, the impugned order is fit to be quashed.

7. On the other hand, the counsel for the opposite parties submitted that the alleged compromise between the members of the first party to the proceeding and their father Bachchu Mahato was a fraudulent one and as such the sons of the said Baehchu Mahato rightly made an application to include that lands of Khata No. 30 in the proceeding and to implead them as third party thereto and the impugned order whereby the five sons of Bachchu Mahato have been added as third party is legal and justified and does not require any interference by this Court.

8. It is a settled principle of law that a proceeding u/s 145 of the Code is confined only to two parties between whom there is a dispute with regard to possession and impleadment of a third party is not permissible in such a proceeding. In the present case, admitted position is that in the year 1985, 4 plots of khata No. 30 were excluded from the proceeding and the said bachchu Mahato one of the members of the second party, who was interested in the lands of the said khata No. 30 was expunged. The proceeding thereafter continued with respect to the remaining lands between the two parties. Nine years thereafter, opposite parties No. 24 to 28 unnecessarily made an application for being added as parties to the present proceeding, when plot No. 149, 209, 264 and 371 of khata No. 30 are not the subject matter of the proceeding. Admittedly, they have no interest in the lands which were the subject matter of the proceeding and, therefore, they are neither necessary nor proper parties to it. The opposite parties No. 24 to 28 are none else, but sons of the said Baehchu Mahato, whose name was expunged from the present proceeding in the year

1985 and thereafter for a long period of nine years, his sons who wanted to become party in the proceeding remained inactive and indifferent and no sufficient, reasonable and bonafide cause for not taking any step against the deletion of the name of Bachchu Mahato and release of lands of khata No. 30 from the proceeding for such a long period has been shown by them. In my opinion, therefore, their application for becoming party was liable to be rejected.

9. When the lands in which the opposite parties No. 24 to 28 claim their interest are not the subject matter of the proceeding, their interest in any manner is not going to be affected by the final order passed in this proceeding relating to the lands, which are the subject matter of the proceeding. The impugned order for addition of opposite parties No. 24 to 28 herein as third party to the proceeding u/s 145 of the Code in the court below is, therefore, quashed. The proceeding being very old and pending since the year 1984, learned Magistrate is directed to dispose of the same at the earliest.