

(1984) 05 PAT CK 0039

In the Patna High Court

Case No : Criminal Revision No. 427 of 1981 and Criminal Revision No. 733 of 1983

Bipin Bihari Ojha and Others

APPELLANT

Vs

Bhup Narain Mishra and others
 Ram Singasan Singh
and Others Vs Bipin Bihari Ojha and Others

RESPONDENT

Date of Decision : 11-05-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Hindu Succession Act, 1956 — Section 14

Citation : (1986) PLJR 639

Hon'ble Judges : M.P. Varma, J

Bench : Single Bench

Advocate : Tarakant Jha, Ram Suresh Roy and Kamla Prasad Roy, for the Appellant; Jugal Kishore Prasad, Mahesh Prasad, R.K. Sinha and A.K. Lall, for the Respondent

Final Decision : Allowed

Judgement

M.P. Varma, J.—The members of the first party are the petitioners, whereas the members of the second, third and fourth parties are opposite parties in this case. The petitioners have challenged the order dated 14.3.1981, passed by the learned Executive Magistrate, Buxar, whereby possession of the 2nd party has been declared over 10.95 acres of the land, possession of 3rd party over 2.76 1/2 acres of land and that of the 4th party over 1.191/2 acres of land in a proceeding u/s 145 of the Code of Criminal Procedure. The possession so declared is upon the basis of different sale-deeds executed by one Sarju Upadhyaya in favour of the respective parties.

2. I must make it clear at the very outset that in view of certain material evidence in the shape of statements of witnesses of the opposite parties supporting the case of the petitioners, having not been considered by the learned Magistrate, I am inclined to send the case back to the learned Magistrate for fresh consideration, it is not necessary to set out the facts of the case herein and

I shall deal with broad points assailing the impugned orders.

3. Broadly taken, the claim of the petitioners is founded on different deed of gifts executed by the widows of the brothers of Ram Bachan Upadhya, father of Sarju Upadhya, whereas the claims of the different sets of the opposite parties is based upon transfers made by Sarju Upadhya who died during the pendency of the proceedings. The 1st party deriving title from the widows banks upon a deed of partition made in the widows' family some time in the year 1944 in which their husband had got specific shares along with Ram Bachan Upadhya father of Sarju Upadhya, and according to the case of the 1st party after the death of their husbands, the widows continued in possession which later on confirmed status of absolute owner in them by coming into operation of section 14 of the Hindu Succession Act, 1956.

4. On the other hand, the case of the opposite parties is that under the terms of partition deed the widows were given the status of maintenance-holders and hence they would not transfer any title to the disputed land in favour of the respective donees.

5. The learned Magistrate, as is apparent from the long orders passed in this case, has given much weightage to the question "right to possess" and title weightage to "actual possession".

6. A glaring example of the same is found in clear terms in the evidence of one Lakshmi Ahir, witness No. 1 for the 4th party, opposite party wherein he has stated admitting the possession of petitioners Bipin Bihari Ojha over along with Ram Gahan Yadav 4th party over 18 bighas of land. Likewise another witness Ram Singhasan witness No. 2 for the 3rd party and 3rd party himself has also stated that he heard that Rikhwato gifted her one fourth share to her nephew Bipin Bihari, Lakhangir gifted her share to Sudarshan Ojha and Basmati gifted some land to Jainarayan Mishra and all the lands excepting those covered under the Rebala of Ram Gaban were in possession of petitioner Bipin Bihari, Sudarsan, Jainarayan and Busmato.

7. Both sides have tried to establish their possession through entries in different records of the State authorities which do not support the exclusive claim of any party. In that situation the documents may serve as collateral if evidence of actual possession has to be tested. But they themselves cannot form a conclusive evidence of possession. The examination of witnesses of all the parties do point to the fact of actual possession and the learned Magistrate should have scrutinized the same in order to arrive at the question of actual possession of the parties, but instead the Magistrate has treated the evidence of witnesses as incidental and the documents, which I have already said are of conflicting import, as the real piece of evidence, which is quite contrary to the scope of determination of question of possession in a proceeding u/s 145 of the Code of Criminal Procedure, Presumptions and inferences drawn from the contents of those documents may serve as a guideline in determining the

question of possession of the respective parties but they cannot be made sole or mere sole-basis for such a consideration.

8. The learned Magistrate has taken into consideration in deciding the question of possession against the 1st party a few illegalities, in the shape of want of permission and ineffectiveness pending mutation proceeding, entry survey records of joint status etc. for deciding the proceeding which, though relevant, are of a very meagre effect upon the question of actual possession.

9. In the above light the finding given by learned Magistrate in the order under challenge, becomes vitiated and calls for a consideration afresh.

10. During the course of arguments before the 2nd and the 3rd party opposite party have also made a grievance against the order of the learned Magistrate alleging that possession over certain places of lands have been denied to them on untenable grounds and in that view they also challenge the findings of the learned Magistrate.

11. While the present criminal revision was pending here, another Cr. Revision No. 342/81 was filed by 3rd party in the court of the Sessions Judge Bhojpur, Arrah against the same said order dated 14.3.81 and in order to avoid conflicting decisions, the said revision was also sent for to be heard along with the present revision and this order disposing of the present revision disposes of that Criminal Revision as well. In the result, the Criminal Revision applications succeed. The order of the Magistrate is set aside and the case is remitted for a fresh consideration in accordance with law after giving opportunity to the parties of being heard.