

(2007) 08 PAT CK 0097

In the Patna High Court

Case No : Criminal Miscellaneous No's. 1369 and 896 of 2005

Bishnu Madhav Prasad Modi and Others

APPELLANT

Vs

Jayant Prasad Modi and Another
 Gausi Lal Singh and
Others Vs The State of Bihar

RESPONDENT

Date of Decision : 22-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144, 145

Citation : (2007) 4 PLJR 386

Hon'ble Judges : Madhavendra Saran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Madhavendra Saran, J.—Cr. Misc. No. 1369/05 and Cr. Misc. No. 896/05 have been heard together and are being disposed of by this common order. Cr. Misc. No. 1369/05 has been filed for quashing the order dated 8.1.2004 passed by Sub-Divisional Magistrate, Kishanganj in Case No. 611M/03 by which the pending proceeding u/s 144 of the Code of Criminal Procedure (in short as the Code) was converted into one u/s 145 of the Code.

2. Cr. Misc. No. 896/05 has been preferred for quashing the order dated 30.11.2004 passed by learned Sessions Judge, Purnia in Cr. Revision No. 253/04 whereby and whereunder he dismissed the revision preferred against the order of cognizance dated 27.7.2004 passed in Complaint Case No. CC-30/04 by learned Chief Judicial Magistrate, Kishanganj.

3. It appears that one Jayant Prasad Modi filed an application before the Sub-Divisional Magistrate, Kishanganj on the basis of which a proceeding u/s 144 of the Code was initiated by order dated 14.11.2003 over an area of 3.20 acres consisting of plot Nos. 5, 8 and 9 under khata No. 16, thana No. 45 of village Ghoramara. In the said proceeding, petitioners were the second party whereas Jayant Prasad Modi was the first party. It is further said that a proceeding u/s 107 of the Code was already pending between the parties and in that proceeding

order for interim bond had been passed as there was dispute between the parties in regard to standing paddy crops over the disputed land. Notices were accordingly issued and served on the second party. It is said that on 21.11.2003 first party filed an application that the second party had harvested paddy crops in violation of the prohibitory order of the Magistrate. The learned Magistrate called for a report in that connection from the police. The police submitted its report dated 21.12.2003 saying that on 29.11.2003 the members of the second party harvested paddy crops from about half area of the land in question. The second party i.e. petitioners filed an application dated 28.11.2003 and made a prayer before the Magistrate to call for a report from any other authority as according to first party the paddy crops of the entire disputed land has been harvested on 21.1.2003 but the police report was that the same has been harvested on 29.11.2003.

4. The case of the second party i.e. the petitioners before the Magistrate was that the land in question along with other lands was recorded under khata No. 16 in the name of Chanchal Prasad Modi and 12 others. Further the three plots in question were recorded under Sikmi khata No. 13 in the name of Sadhu Lal Rajbanshi. Petitioners 2 to 5 are the sons of Sadhu Lal Rajbanshi, Consolidation Case No. 2/ 85-86/194/83-84 was filed by the Secretary, Bhoodan Yagna Committee against Chanchal Prasad Modi including father of petitioner No. 5 Kunjilal Modi. Their further case was that in the family partition the disputed land fell in the share of petitioner No. 5 who is kaimidar of the land. The Secretary, Bhoodan Yagna Committee claimed that the land had been donated to the Committee by Chanchal Prasad Modi. Bhoodan Yagna Committee, however, failed to produce any document of transfer in its favour. The claim of Bhoodan Yagna Committee was rejected by order dated 30.11.1985 by the Consolidation Officer.

5. Learned counsel for the petitioners on the basis of decision of this Court reported in Ram Nihora Singh Vs. Ram Sanjwan Singh submitted that after decision of the matter by Consolidation Authority the conversion of proceeding u/s 145 of the Code is bad in law. He submitted that the decision of the Consolidation authority has overriding effect and cannot be challenged in a Civil Court.

6. On the other hand, learned counsel for opposite party on the basis of Full Bench decision of this Court reported in Seikh Haidar Zai Vs. Md. Yusuf Ansari and Another, submitted that the suit based on title challenging the correctness of the entry in the register of lands under Consolidation Act are not barred in Civil Courts.

7. The law is well settled. The use of expression "conversion" is merely a misnomer when a pending proceeding u/s 144 of the Code is purported to be converted into one u/s 145 of the Code. What a Magistrate does is that on examination of materials in the proceeding u/s 144 of the Code if he feels satisfied that a dispute likely to cause breach of peace exists concerning any land within his jurisdiction and which authorises him to make an order in terms of this

section he initiates a fresh proceeding u/s 145 of the Code. Once the Magistrate is satisfied regarding existence of breach of peace, this Court cannot enter into this satisfaction. This Court can interfere only when the order does not show apprehension of breach of peace or the dispute is not a bona fide one. It is also settled view that this Court cannot go into the sufficiency of the materials which satisfied the Magistrate for initiating the proceeding u/s 145(1) of the Code. Therefore, when the Magistrate records his satisfaction as to existence of breach of peace in his preliminary order u/s 145(1) of the Code this Court will not go into sufficiency or otherwise of the materials on which the satisfaction of the Magistrate is based.

8. The disobedience of the prohibitory order u/s 144 of the Code becomes punishable u/s 188 of the Code.

9. In the aforesaid situation, at present I do not find any error in the impugned order dated 8.1.2004.

10. These two applications are accordingly dismissed. However, the petitioners will be at liberty to raise the point before the court below that no such dispute likely to cause breach of peace existed and the order should be cancelled. The learned Magistrate after hearing the parties shall decide the matter in accordance with law.