
(2008) 08 JH CK 0085
In the Jharkhand High Court

Chandeshwar Lal Das and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245, 437, 482
Penal Code, 1860 (IPC) — Section 107, 120B, 424, 467
Registration Act, 1908 — Section 82

Citation : (2008) 4 JCR 19

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The petitioners have invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the order impugned dated 23.6.2005 passed by Sri S.K. Singh, the Judicial Magistrate, 1st Class Dhanbad in C.P. case No. 634 of 2005 whereby and whereunder having been satisfied that prima facie offence was made out under Sections 424/467/107/120-B of the Indian Penal Code and u/s 82 of the Registration Act, 1908 against the petitioners, directed summons to be issued against them.

2. The prosecution story in short was that the petitioner No. 1 Chandeshwar Lal Das, Advocate on record in Title (Partition) Suit No. 74 of 2004, was assigned the power of attorney by the petitioners No. 2, 3, 4, 5 and 6 to execute a sale deed and accordingly he executed on 19.4.2005 in favour of the petitioner No. 7 Rita Devi Verma.

3. The complainant/opposite party No. 2 Mahendra Singh brought about a complaint case No. 634 of 2005 on 4.5.2005 alleging inter alia that the land situated in Mouza No. 12 appertaining Khata No. 142, plot No. 1350 having area of 66 decimals, originally belonged to Prayag Kumari Devi wife of Raja Durga Prasad Singh of Jharia Raj Estate. She executed registered sale deed No. 7549 on 8.10.1947 in favour of one Bhupal Sain who died leaving behind Shyam Lal

Singh and Mahendra Singh (opposite party No. 2). The petitioners No. 2 to 6 filed Title (Partition) Suit No. 74 of 2004 against Shyam Lal Singh and Mahendra Singh (O.P. No. 2). Though the land in question was self acquired property of Bhupal Sain, but this fact was denied. It was alleged that all the petitioners knowing fully well that the land in question was the purchased land of Bhupal Sain and having well aware of the fact that the petitioners No. 2 to 6 filed Title (Partition) suit No. 74 of 2004 against the complainant/opposite party No. 2 and his brother, they fraudulently executed the sale deed No. 3554 dated 19.4.2005 though the power of Attorney holder in order to get registered collusive document by giving and incorporating false statements and description in the recital of the sale deed. The recital made in the sale deed that the said property stood recorded in the name of Falari Dom was absolutely false and incorrect and it was intentionally incorporated by the accused for their wrongful gain and it was intentionally and willfully omitted in the registered sale deed that the land transferred to the petitioner No. 7 was the subject matter of the controversy pending Title (Partition) Suit No. 74 of 2004 in which the petitioner No. 1 was the conducting lawyer. Last but not the least, allegation that has been made in the complaint petition was that the vendors were not the grandsons of Bhupal Sain rather the fact was wrongly misrepresented in the sale deed that they were the grandsons of Bhupal Sain and in that manner the petitioners in prosecution of criminal conspiracy in collusion with each other got the sale deed executed in the name of the petitioner No. 7 Rita Devi Verma for their wrongful gain but by causing loss to the complainant.

4. The learned Counsel for the petitioners by appending a genealogical table submitted that Prayag Kumari Devi of Jharia Raj Estate had settled the land in question in favour of Bhupal Sain who was altogether five brothers and his other four brothers were Babu Lal Sain, Kunwar Sain, Nukul Sain and Sripati Sain. Bhupal Sain being the eldest brother was the "karta" of the family so his younger brothers had joint interest in the said property which was settled in the name of their eldest brother. The said property was also partitioned orally and all his four brothers used to live on their respective shares and in that manner the land in question was never solely under the exclusive possession of late Bhupal Sain and joint right and title of the younger brothers could not be denied. But Title (P) No. 74 of 2004 filed by the petitioners was permitted to be withdrawn on the ground that the relief as sought for was settled amongst the parties with the mutual consent.

The learned APP submitted that this Court in exercise of inherent jurisdiction may not decide the right and title of the parties on a particular land.

5. Having regard to the facts and circumstances of the case, I find that the complainant/opposite party No. 2, who filed the complaint petition, has tried to make out a prima facie criminal case against the petitioners for the alleged offence and the learned Judicial Magistrate Dhanbad having been satisfied by a detailed discussions found a prima facie criminal case against the petitioners and

directed summons to be issued against them. It is not clear from the record as to whether the petitioners have appeared in the Court of Judicial Magistrate on receipt of summons. Yet, I find substance in the arguments that the title over the land in question cannot be decided in exercise of inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure. Taking the considered view, I direct that in the event of appearance of the petitioners before the learned Judicial Magistrate and on the presentation of the petition u/s 437 as well as Section 245 of the Code of Criminal Procedure, the same shall be considered on its own merit without being prejudiced by this order.

6. With the above observation this Criminal Miscellaneous petition is dismissed. Petition dismissed.