
(2007) 09 PAT CK 0072

In the Patna High Court

Chhabi Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 137, 397, 401

Citation : (2009) 3 PLJR 1060

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Judgement

Mihir Kumar Jha, J.—Heard Counsel for the parties.

2. The petitioner is aggrieved by the order, dated 17.10.2006 passed in Criminal Revision No. 40 of 2006 whereby and whereunder the revisional Court has set aside the order, dated 16.07.2005 passed by the Sub-Divisional Magistrate, Sadar Bhagalpur in Misc. Case No. 1377 of 2004 u/s 133 of the Code of Criminal Procedure.

3. The petitioner on his own showing is the Second Party in the 133 proceeding which was initiated on an application of the Opposite Party No. 2 and consigned by order, dated 16.07.2005 by the Sub-Divisional Magistrate, Bhagalpur on the ground that the Opposite Party No. 2, the first party was continuously absent. Against the said order, dated 16.07.2005, the Opposite Party No. 2 had preferred a revision before the Sessions Judge, Bhagalpur in Revision Application No. 40 of 2006 which came to be decided by the impugned order, dated 17.10.2006. The revisional Court as indicated above had allowed the revision and set aside the order of the Sub-Divisional Magistrate, Bhagalpur dated 16.07.2005 on the ground that the Opposite Party No. 2, the first party, had not been issued any notice of 133 proceedings. In this regard, the finding of the revisional Court is as follows-

I perused the L.C. record. It is obvious that petition as filed before the Commissioner and the same was sent initially to the S.D.M., Bhagalpur. No notice

was issued to the revisionist. Therefore, the non-appearance of the revisionist in the Court of S.D.M. can not be attributed on his part.

4. The only corollary of the said findings recorded by the revisional Court was that the order of the Sub-Divisional Magistrate, Bhagalpur dismissing the 133 proceedings in default due to non-appearance of the Opposite Party No. 2 had to be set aside and that has been done by the revisional Court.

5. Counsel for the petitioner, however, raised two issues as against the impugned order passed in revision, namely, that he had not been made party in the said revision application nor he was heard by the revisional Court. He further submits that from the records of the Title Suit No. 176 of 2002 and the interlocutory order, dated 09.01.2003 passed in that suit, it would be manifest that there is a bonafide dispute with regard to the land in question and that if the Opposite Party No. 2 claiming his right of easement has any grievance, he, as per the order, dated 09.01.2003 passed by the Subordinate Judge I, Bhagalpur had to file his own suit and could not have taken recourse of a proceeding u/s 133 of the Code of Criminal Procedure.

6. Counsel for the Opposite Party No. 2 fairly states as with a regard to the first point that the petitioner had a locus standi and should have been made party to the proceedings. To that extent, the petitioner is correct in making a grievance that he ought to have been heard by the revisional Court. However, the aforementioned findings recorded by the revisional Court as quoted above is not in dispute and the Counsel for the petitioner very fairly submits that it is true that the petitioner had been given no notice by the Sub-Divisional Magistrate, Bhagalpur before passing the order, dated 16.07.2005.

7. In that view of the matter, though Section 397 read with Section 401(2) of the Code of Criminal Procedure requires revisional Court to hear the petitioner before passing the impugned order. I would not like to interfere with the revisional order on the simple ground that ultimately even if the petitioner today is made a party in the revision application, and is also heard by the Court below, the conclusion would remain the same and the proceedings in any view of the matter will have to be remanded to the original authority i.e. the Sub-Divisional Magistrate, Bhagalpur. In that view of the matter, the first point even though technically correct is answered against the petitioner as substantial justice would require that the parties must consider that once such a proceeding was initiated that must come to a logical end by holding an enquiry u/s 137 of the Code of Criminal procedure and passing a final order in terms thereof.

8. The second aspect of the matter which has been raised by the petitioner has no merit inasmuch as the petitioner has not challenged the order initiating 133 proceedings and infact he had filed his show cause reply before the Sub-Divisional Magistrate, Bhagalpur. In that view of the matter, today he can not assail the initiation of proceeding while challenging the correctness of the revisional order. The petitioner is apprehensive that the Sub-Divisional

Magistrate, Bhagalpur nay now consider his objection with regard to the maintainability of the proceedings u/s 133 of the Code of Criminal Procedure. In my view, such apprehension of the petitioner is totally unfounded because now when as a consequence of the order of the revisional Court, the case has to be decided afresh by the Sub-Divisional Magistrate, Bhagalpur. It is evident that he would decide the matter and pass an appropriate order in accordance with law without being prejudiced by any of the observations/findings/comments made in the revisional order or in the present order by applying his independent mind.

9. With the aforementioned observations and directions, this application is disposed of.