
(1977) 05 PAT CK 0006

In the Patna High Court

Case No : Criminal Revision No. 337 of 1975

Girish Singh Chaudhary and Others

APPELLANT

Vs

Chandrika Sharma and Others

RESPONDENT

Date of Decision : 03-05-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 379

Citation : (1978) 26 BLJR 85

Hon'ble Judges : B.D. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.D. Singh, J.—This application under Sections 397 and 401 of the Code of Criminal Procedure, 1973, by Girish Singh Chaudhary and three others is directed against the final order dated 12th December, 1974, passed by a Magistrate in a proceeding u/s 145 of the Code of Criminal Procedure, 1898. The disputed lands measure 23 acres and odd in various plots of Khata Nos. 67, 70 and 101 situated in village Kanpur, Police Station Amarpur, district Bhagalpur. The petitioners were the second party to the said proceeding, whereas the opposite party were some of the members of the first party.

2. In paragraph 7 of the application, the petitioners have stated that they could not contest the case before the Magistrate as they were thrown into prison and had to be in jail from 8-10-1974 for a period of three months and the court had refused to accede to the prayer put up on behalf of the petitioners for time, on that ground, and hurried through the proceeding without enabling the petitioners to put in their documents and affidavits for a proper consideration of the subject-matter of dispute before him. A counter-affidavit has been filed on behalf of opposite party Nos. 1 to 11, who are some of the members of the first party to the proceeding, and in paragraph 8 thereof it has been stated that only petitioners Nos. 1 and 3 were in jail in pursuance of an order of conviction in a

case u/s 379 of the Indian Penal Code brought by another person and petitioners Nos. 2 and 4 are majors and sons of Girish Singh Choudhary (Petitioner No. 1) and they were conducting the case for all the petitioners before the Magistrate. In that view of the matter, by order dated 10th December, 1976, I directed Shri J.K. Lal, Magistrate, Banka, district Bhagalpur, or his successor-in-office to make enquiry, after hearing counsel for the parties and examining evidence and to submit report in this regard within two months.

3. There was another lacuna in the application which the petitioners had filed in this court. The petitioners have impleaded only opposite party Nos. I to 11 as members of the first party in the proceeding, although there was another member Basdeo Sah of the first party in the said proceeding. In this court Basdeo Sah has not been impleaded at all. That apart, there were several members of the third party to the said proceeding in whose favour also possession was declared by the Magistrate and the members of the third party have not been impleaded by the petitioners in their application in this court. Therefore, by order dated 10th December, 1976, I directed the petitioners to take necessary steps in the matter subject to the provision of limitation.

4. When the case was taken up for hearing on 2nd May, 1977, it was pointed out that the petitioners had not taken any steps for impleading the members of the third party in their application. Reference may be made to the impugned order which is in Hindi and which reads thus:

5. Learned counsel appearing on behalf of the petitioners submitted that even if the members of the third party were not impleaded, this application on behalf of the petitioners is maintainable, and it should not be brushed aside, merely on the ground that the petitioners did not implead the members of the third party in their application. Besides, he submitted that in the instant case, as it appears from a portion of the impugned order, which has been quoted above, that possession over the disputed land was declared in favour of the first party, and the third party according to their respective claims. Therefore, it should not be held that the application filed by the petitioners was not maintainable, at least, so far as the members of the first party were concerned.

6. In my view, the submission of the learned Counsel for the petitioners is not acceptable. It may be noted that in the instant case, as pointed out above, petitioners have omitted to implead in the present application one of the members of the first party, whose name is Basdeo Sah. That apart, I find for example in respect of Plot No. 259, which is one of the disputed plots, having an area of 3.08 acres, possession has been declared in favour of the members of the first party as well as the members of the third party. As regards plot No. 261, which has an area of 0.41 acre, both the members of the first party and third party have been declared to be in possession. With respect to plot No. 234, which has an area of 1.09 acres, possession has been declared only in favour of the third party. In respect of Plot No. 508, which measures 4.36 acres, possession has been declared in favour of both the members of the first party

and the third party. In that view of the matter, in my opinion, the application filed by the petitioners is not maintainable.

7. It may also be noticed that in the instant case, as mentioned above, the order dated 10th December. 1976 was passed by me. The petitioners took no steps for impleading the members of the third party. Therefore, sufficient opportunity was given to the petitioners to implead the members of the third party, but they did not avail the opportunity. If the petitioners are aggrieved by the impugned order, they can file a civil suit, if so advised.

8. In the result, the application is dismissed.