
(2007) 10 AHC CK 0145
In the Allahabad High Court

Govind Prasad Jaiswal and Others

APPELLANT

Vs

State of U.P. and Bhola Nath Jaiswal

RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 482

Citation : (2007) 10 AHC CK 0145

Hon'ble Judges : R.K. Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Rastogi, J.—This is an application u/s 482 Cr.P.C. to quash the order dated 1.8.2006 passed by the Addl. Chief Judicial Magistrate. Court Room No. 2, Allahabad in Crl. Misc. Case No. 220/XII/06. Bhola Nath v. Gopal Das and Ors.

2. The facts relevant for disposal of this application are that complainant O.P. No. 2 filed an application u/s 156(3) Cr.P.C. against the present applicants with these allegations that Ramadhin was common ancestor of the parties. The name of Ramadhin's wife was Smt. Sitabo Devi. Sitabo Devi had inherited ancestral property left by Ramadhin. She purchased house No. 228/277, Colonelganj, Allahabad from that ancestral property and as such the above house became property of the joint hindu family. After death of Sitabo Devi Raja Ram became Karta of the joint hindu family and as per law applicable to the joint hindu family, Raja Ram and his three sons Gopal Das. Bhola Nath and Govind Prasad became owner of 1/4th share each in the above house. After the death of Raja Ram his 1/4th share in the property was equally inherited by his three sons Gopal Das, Bhola Nath and Govind Prasad and his two daughters (sic) Thus after death of Raja Ram his three sons became owner of $\frac{1}{4} + \frac{1}{20} = \frac{3}{10}$ share each in the house while his two daughters, namely, Kamla Devi and Sushila Devi had $\frac{1}{20}$ share each in that house, No partition had taken place between the parties. Accused No. 4 Govind Prasad is a very clever man and he obtained sale deed from Gopal Das Kamla Devi and Sushila Devi in favour of his wife Saroj Devi in

excess of their shares. They had done this act knowingly and had thus committed an offence. The complainant gave information of this incident to police station Colonelganj, Allahabad but his report was not written. Then he sent information to the S.S.P. Allahabad, but no action was taken in the matter. Then he moved this application u/s 156(3) Cr.P.C. before the Addl. Chief Judicial Magistrate, Court No. 2, Allahabad.

3. The learned Magistrate after hearing the complainant was of the view that prima facie cognizable offence was committed by the accused persons and he, therefore, passed an order for registration of the case against the accused persons by the Station Officer of police station Colonelganj, Allahabad and for its investigation. Aggrieved with that order the accused applicants have filed this application u/s 482 Cr.P.C.

4. The applicants have alleged in the affidavit of Govind Prasad Jaiswal filed in support of the application u/s 482 Cr.P.C. that Smt. Sitabo Devi was exclusive owner of the house and it was not a joint hindu family property and so after her death her son Raja Ram became its sole owner and on the death of Raja Ram his three sons Gopal Das, Govind Prasad and Bhola Nath and two daughters Kamla Devi and Sushila Devi inherited 1/5th share each in the property and that share had been rightly sold by Gopal Das, Kamla Devi Sushila Devi and as such no offence has been committed by the accused persons.

5. A counter affidavit has been filed by O.P. No. 2 affirming the allegations made in the application u/s 156(3) Cr.P.C. A rejoinder affidavit has also been filed by Govind Prasad Jaiswal applicant No. 1 in reply to the counter affidavit of O.P. No. 2.

6. I have heard learned Counsel for the parties and have also gone through all these documents.

7. It is to be seen that there is no dispute on this point that Sitabo Devi had purchased the disputed house vide a registered sale deed executed in her favour. The allegation of the complainant O.P. No. 2 is that she had purchased this house out of the ancestral property left by her deceased husband and so the nature of this house purchased by her was of joint family property and so on her death her son Raja Ram and three sons of Raja Ram who were members of joint hindu family inherited 1/4th share each in the house and on the death of Raja Ram his 1/4th share devolved upon his three sons and two daughters equally and in this way three sons of Raja Ram became owner of 3/10th share each and two daughters of Raja Ram became owner of 1/20 share each, and since these daughters had executed sale deed of 1/5th share each in the property, they have committed cognizable offence and since this sale deed was executed in favour of Saroj Devi she and her husband Govind Prasad Jaiswal are so liable for the offence.

8. On the other hand case of the applicants is that Sitabo Devi became exclusive owner of the property after purchasing it vide registered sale deed, and it was

not joint family property and after her death it was exclusively inherited by her son Raja Ram and after death of Raja Ram, his all the three son; and two daughters inherited 1/5th share each in this house. There is no dispute on this point that these daughters have executed sale deed of the so called 1/5th share each in the disputed house in favour of Smt. Saroj Devi wife of Govind Prasad Jaiswal. I am of the view that actually this is a dispute of civil nature and except the above allegation of selling the house in excess of their share there is no allegation in the application u/s 156(3) Cr. P.C. that the accused had committed any fraudulent act or any forgery was committed by them or the sale deed was executed by any other person impersonating himself. There is no such allegation. It is to be seen that in respect of above dispute, Bhola Nath O.P. No. 2 has already filed original suit No. 492 of 2006 in the court of the Civil Judge (Senior Division) Allahabad for declaration that the sale deed executed by defendants of that suit in excess of their share was invalid and void. This suit was filed on 15.7.2006. Anyhow, it is apparent from the discussion attempted above that the dispute between the parties is with regard to the extent of their shares in the property, which hinges on the point whether the house purchased by Sitabo Devi was her exclusive property or was joint family property. The allegations made in the application u/s 156(3) Cr.P.C. fail to disclose commission of any cognizable offence and the learned Magistrate has erroneously observed that cognizable offence was made out. It is also to be seen that he has observed in his impugned order that cognizable offence was made out, but he has nowhere disclosed as to what cognizable offence and punishable under which provision of the Indian Penal Code or any other enactment was made out.

9. The learned Counsel for the O.P. No. 2 cited before me a ruling of this Court in "Sint. Rekha Verma and Ors. v. State of U.P. and Anr." 2007 (1) U.P. Cri. 403 in which it has been held that accused have got no remedy against an order passed u/s 156(3) Cr.P.C. because at the stage of passing the order they are not accused and that stage comes at the time of summoning them. He submitted that in view of this ruling present application u/s 482 Cr.P.C. was not maintainable because only an order for registration of the F.I.R. and its investigation had been passed by the court. It is, however, to be seen that jurisdiction of a Magistrate to pass order for registration of the F.I.R. and investigation of the case arises only when there are allegations of commission of cognizable offence. The allegations in the present case failed to disclose commission of cognizable offence as discussed above, and as such the learned Magistrate had no jurisdiction in the present case to pass order for registration of the case and for its investigation in the absence of the allegation of commission of cognizable offence. Such an order passed without jurisdiction can be set aside by this Court in exercise of its power u/s 482 Cr.P.C. to prevent abuse of the process of the court. Hence, this ruling will not render any help to the O.P. No. 2 in the present case.

10. The application u/s 482 Cr.P.C. is therefore, allowed and the order of the Magistrate passed on the application of O.P. No. 2 u/s 156(3) Cr.P.C. is set aside and that application stands dismissed.