
(2012) 05 PAT CK 0082
In the Patna High Court
Case No : Criminal Writ No. 717 of 1997

Jaleshwar Sah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

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

Citation : (2012) 05 PAT CK 0082

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Yogendra Mishra, Mr. U.K. Tiwari, for the Appellant; Uma Kant Prasad, Mr. Parmanand Pd. Nr. Shahi and Mr. Naresh Dass, for the Respondent

Final Decision : Allowed

Judgement

A.K. Trivedi, J.—Petitioners / second party have challenged order dated 31.03.1989 passed by the learned Executive Magistrate, Sri B.N. Dubey, Vashali at Hajipur passed in connection with Misc. Case No. 332 of 1980 u/s 145 Cr.P.C. declaring the disputed land under possession of respondent nos. 4 and 5 / First party (substituted) as well as order dated 19.08.1997 passed by learned Additional Sessions Judge, IInd, Vaishali at Hajipur in Cri. Revision No. 112 of 1989 dismissing the same. Instant case happens to be subject to apathy right from its inception firstly at the part of petitioners / second party, secondly by the successive learned court and thirdly by keeping away from arguing the case by the learned counsel for the respondent no. 4 and 5 / first party as well as learned counsel representing the State who were coming absent since before.

2. On account of dispute leading to apprehension of breach of peace relating to land bearing R.S.P. No. 2247, 2246/2272 total area 24 decimal corresponding to CSP No. 1373 lying at village Biddupur, on a police report a proceeding u/s 144 Cr.P.C. was initiated on 21.04.1980 and after having the show cause filed on behalf of respective parties, it was subsequently converted u/s 145 of the Cr.P.C. wherein both the parties have filed their W.S. witnesses on behalf of first party/

respondent no. 4 and 5 were examined. After closure of case of the first party, while the witnesses on behalf of second party was going on, on one ground or other it could not materialized. Documents were not made an exhibit of the record. However, in the aforesaid background, the learned Executive Magistrate declared possession of respondent no. 4 and 5 / first party over the land under dispute.

3. It has been contended on behalf of the petitioners that the learned lower had passed collusive order ignoring the materials available on the record. The learned lower court had gone to such extent that although the W.S. was filed on his behalf on 07-03-1983 but the learned lower court had incorporated in his order that no W.S. was filed and on the ground thereof declared possession of the respondent no. 4 and 5 / first party over the land under dispute. Not only this, the learned Magistrate failed to deal with the evidence in proper and legal way. In likewise manner the learned Revisional court also dealt with and dismissed the revision.

4. Because of the fact that on account of absence of learned counsel for the respondent no. 4 and 5 as well as learned A.A.G.-III who were coming absence since before, therefore, I took pain to go through successive order minutely as well as the evidence available on the record. From the order of the learned Executive Magistrate, it is evident that he had specifically incorporated that no W.S. was filed on behalf of second party / petitioners while it happens to be. The evidence has not properly been scrutinized. However, citation made on behalf of petitioners concerning 1987 Bihar Law Judgment page 281 is of no avail as those documents were not an exhibit of the record. From the order of the Revisional court, it appears that the aforesaid anomaly persisting in the order of the learned Executive Magistrate was not at all considered. Presence of aforesaid material contrary to the finding of the learned lower court is suggestive of the fact that the order has been passed in haphazard manner without properly securitizing the materials and dismissal of revision appears to be by way of completing paraphernalia. Hence, both the successive orders are set aside. Consequent thereupon, petition is allowed but without cost.