
(1965) 10 PAT CK 0004
In the Patna High Court

Kartik Lall and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-10-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1898 (CrPC) — Section 107, 117, 141, 144

Citation : (1967) CriLJ 1119

Hon'ble Judges : K. Sahai, J;A.B.N. Sinha, J

Bench : Division Bench

Judgement

K. Sahai, J.—This is an application by Kartik Lall and big sons under Articles 226 and 227 of the Constitution with a prayer to issue an order and directions, restraining the opposite party from interfering with their possession. The State of Bihar, the District Magistrate of Monghyr and? the Sub-divisional Officer of Khagaria are opposite party Nos. 1 to 3. Opposite party Nos. 4 to 15 are some Mahomedans.

2. The relevant facts may be related briefly. There was a dispute between the petitioners on one side and some Mahomedans including opposite party Nos. 4 to 15, on the other relating to 3 kathas of land appertaining to plot No. 2025 under khata No. 153 in Mahalla Bishwanathganj, Ward No. 4, of the Notified Area Committee at. Khagaria. Petitioner No 1, as karta of his family, instituted Title Suit No. 34 of 1955 in the Munsif, 1st Court, Monghyr, for declaration of title to the disputed land and for issue of a permanent injunction, restraining members of the public in general and opposite party Nos. 4 to 15 in particular from interfering with the plaintiff's possession over that land. The suit was decreed by the Munsif on the 21 January, 1957. Title Appeal No. 23 of 1957 against the judgment and decree passed by the Munsif was dismissed by the 2nd Additional Subordinate Judge of Monghyr on the 30th June, 1959.

Second Appeal No. 1096 of 1959, which was filed in this Court, was dismissed by Raj Kishore Prasad, J. on the 15th March, 1961. The petitioners' case is that

they started constructing a house upon the disputed land, and then members of the Muslim community, including opposite party Nos. 4 to 15, began to interfere with them. The matter went to the Sub-divisional Magistrate of Khagaria who by his order, dated the 27th May, 1963 (Annexure E), drew up a proceeding u/s 107 of the Code of Criminal Procedure against some persons including some of the pre-sent opposite party Nos. 4 to 15. At the time, however, he passed an order u/s 144 of the Code of Criminal Procedure, restraining the "public generally (except Kartik Lall Sao) from going upon the land of khata No. 153, khasra No. 2025."

3. The petitioners' case further is that no action for execution of interim bonds u/s 117(8) has been taken by the Sub-divisional Magistrate against the opposite party, in spite of a prayer to that effect, nor has the main proceeding u/s 107 of the Code of Criminal Procedure against the opposite party been disposed of. Their case further is that the order u/s 144 was really detrimental and injurious to them because Kartik Lall Sao alone could not construct the house which he and the other petitioners wished to construct upon the disputed land, and that the order u/s 144 was illegally kept in force by repeated extensions up to the 17th September, 1963. Their case also that, since members of the Muslim community are likely to create a riot, the Sub-divisional Magistrate of Khagaria and the District Magistrate of Monghyr have posted constables on and near the disputed land in order to prevent members of the family and employees of Kartik Lall Sao from going upon it. It is in these circumstances that the prayer, which I have mentioned above, has been made by them.

4. I think that it must be well known to all officers occupying positions like that of a District Magistrate or a Sub-divisional Magistrate that decrees and orders passed by the Civil Court must be respected. If anyone does any act which tends to interfere with the performance of the decree and order of a Civil Court, the executive authorities must take necessary action in order to prevent the person from doing the act. In the present case, the situation is very simple. If, as stated by the petitioners, petitioner No. 1 has obtained a decree from the Munsif, which has been affirmed up to this Court, and a permanent injunction has been issued under that decree to the public in general and to opposite party Nos 4 to 15 in particular, restraining them from interfering with the petitioners' possession, the executive authorities should take all suitable and legal action to prevent people from disobeying the decree and from acting against it.

5. I do not think that the Sub-divisional Magistrate was fair in restraining the members of the public, including members of the family and employees of Kartik Lall Sao, by means of orders u/s 141 from going upon the land. "This amounted, in fact, to stopping Kartik Lall Sao from constructing a house upon the disputed land which he was perfectly entitled under the decree of the Civil Court to construct. Even if the thought that members of the Muslim community, including opposite party Nos. 4 to 15, would create a breach of the peace, his clear duty was to stop them from trying to create a breach of the peace. He could not forget or neglect his legal duty merely because one party or the other belonged

to one community or the other. He had to help the party, which was successful in the Civil Court, in doing what it had a right under the decree to do.

The difficulty, however, is that the orders u/s 144 have already lost their force. The petitioners say that the District Magistrate and the Sub-divisional Magistrate have deputed police constables at the spot; but it is difficult for us to know the purpose for such deputation. If they have deputed the police to prevent any breach of the peace, their action is perfectly all right. If, however, they have deputed the police to stop the petitioners from going on with the construction of their house on the disputed land, they are wrong. As the facts are not clear and definite, no specific order or direction can be issued either to the District Magistrate or to the Sub-divisional Magistrate,

6. There is one more observation which I must make, if the proceeding u/s 107, which was drawn up on the 27th May, 1983, is still pending, I think that the Court concerned is acting in a very lethargic and leisurely manner. Such a proceeding must be disposed of at the earliest possible moment. The proceeding must, therefore, be disposed of as expeditiously as possible if it is true that it is still pending.

7. As no case for issue of an order, direction or writ has been made out, the application is dismissed subject to the observations which I have made above.

A.B.N. Sinha, J.

8. I agree.