
(2019) 12 JH CK 0281
In the Jharkhand High Court
Case No : Writ Petition (C) No.4761 Of 2019

Kartik Prasad Gupta

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 144, 145, 482

Citation : (2019) 12 JH CK 0281

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Rohitashya Roy @ Rohit Roy

Final Decision : Disposed Of

Judgement

1. The present writ petition has been filed for issuance of direction upon the respondent nos.1 to 4 to show cause as to how and under what authority

they are interfering with the possession of the petitioner over part of his ancestral house situated within Ward no.I (old) of Chakradharpur

Municipality, pertaining to Khata no.82, plot no.172(a) and (b), measuring an area of 2.937 decimals from where he was carrying on his business to

earn his livelihood. Further prayer has been made for restraining the respondents from interfering with the possession of the petitioner over the part of

the aforesaid property.

2. The factual background of the case as emerges from the writ petition is that the petitioner is the descendant of Mohal Lal Gupta, whereas the

private respondent nos.5 and 6 are descendants of Pran Lal Gupta. A dispute arose between them in relation to the property in question, which led to

filing of Title (Partition) Suit No.48 of 1984 in the court of learned Sub Judge-I, Chaibasa. In the said suit, the predecessors-in-interest of the petitioner

were the plaintiffs, whereas the predecessors-in-interest of the private respondents were the defendants. During pendency of the suit, a proceeding under Section 144 Cr.P.C. being Misc. Case No.126 of 1986 was also initiated, which was subsequently converted into a proceeding under Section 145 Cr.P.C., however, the same was withdrawn, as the partition suit was pending in the court of Sub Judge-I, Chaibasa. The said partition suit was decreed vide judgment dated 16th February, 1996, declaring that the plaintiffs and the defendants are entitled to seek partition of the properties mentioned in Ext.-A along with other properties standing in the branches of Mohan Lal Gupta, Pran Lal Gupta and Gopal Lal Gupta. It was also held by the original Court that the plaintiffs are entitled to seek partition. The decree was accordingly prepared. Thereafter, Title Appeal No.10 of 1996 was filed by Savitri Devi who belongs to the branch of Pran Lal Gupta, which was allowed vide judgment dated 15th December, 2004 by the court of Additional District Judge-cum-Fast Track Court-I, Chaibasa and the judgment and decree passed by the original court was set aside. The respondent no.5-Smt. Savitri Devi @ Savitri Devi Gupta filed a criminal miscellaneous petition being Cr.M.P. No.364 of 2008 under Section 482 Cr.P.C. before this Court, , praying, inter alia, for quashing the order dated 22nd February, 2006 passed by the learned Sub Divisional Magistrate, Porahat at Chaibasa in Misc. Case No.126 of 1986 by which the prayer of the respondent no.5 for removing the lock from the premises in question was rejected, which was subsequently affirmed by the Additional Sessions Judge-II, Chaibasa vide order dated 19th December, 2007 passed in Cr. Revision No.16 of 2006. The said Cr.M.P. No.364 of 2008 was disposed of by a Bench of this Court vide order dated 3rd October, 2018, setting aside the orders dated 22nd February, 2006 and 19th December, 2007 and directing the Sub Divisional Magistrate, Porahat, Chaibasa to ensure that the lock in the premises which was the subject matter of the proceeding under Section 144 Cr.P.C. and later on converted into a proceeding under Section 145 Cr.P.C. be removed immediately under his supervision.

3. Learned counsel for the petitioner submits that in purported compliance of the order dated 3rd October, 2018 passed in Cr.M.P. No.364 of 2008, the Sub Divisional Magistrate, Porahat, Chakradharpur vide order dated 29th December, 2018 directed the Executive Magistrate, Porahat, Chakradharpur

to get the said premises unlocked under his supervision by 8th January, 2019. In the garb of compliance of the order dated 3rd October, 2018 passed

by a Bench of this Court in Cr.M.P. No.364 of 2008, the petitioner who was carrying on his business from the front veranda of the said house has also

been removed from there. It is further submitted that though the authorities were duly empowered to get the said house unlocked in compliance of the

order passed by this Court, yet they were not authorized to evict/remove the petitioner from the front veranda without there being any such direction

of this Court.

4. Learned counsel for the petitioner submits that aggrieved by the said action of the Executive Magistrate, Porahat, Chakradharpur, the petitioner

preferred a representation before the Deputy Commissioner, Chaibasa on 9th April, 2019, a copy of which has been annexed as Annexure-7 to the

present writ petition, however, the same has not yet been responded.

5. Learned A.C. to S.C. (L&C)-I submits that there appears to be long standing civil dispute between the petitioner and the private respondents in

relation to the property in question. The actual situation prevailing in the disputed property is not known. Otherwise also there being several disputed

questions of fact, the prayer made by the petitioner in the present writ petition cannot be entertained in the writ jurisdiction of this Court.

6. Having heard learned counsel for the parties and keeping in view the grievance raised by the petitioner in the present writ petition that the

Executive Magistrate, Porahat, Chakradharpur in the garb of unlocking the premises in question in compliance of the order dated 3rd October, 2018

passed by a Bench of this Court in Cr.M.P. No.364 of 2008 has removed the petitioner from the said property where, according to him, he was

carrying on some business to earn his livelihood, the petitioner is permitted to file a fresh representation before the respondent no.2- Deputy

Commissioner, Chaibasa in this regard. On receipt of the said representation, the respondent no.2 after issuing notice to the private respondents (the

persons from the branch of Late Pran Lal Gupta) and after providing due opportunity of hearing to both sides as well as on making proper enquiry in

the matter, shall take an informed decision in this regard within a period of 12 weeks from the date of receipt of the representation.

7. This writ petition is, accordingly, disposed of with the aforesaid directions.

8. It is made clear that this Court has not gone into the merit of the dispute.