
(1996) 09 PAT CK 0070
In the Patna High Court
Case No : Criminal Revision No. 426 of 1990

Lakhpati Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-09-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 22

Citation : (1997) 1 PLJR 42

Hon'ble Judges : J.N. Dubey, J

Bench : Single Bench

Advocate : Abdul Hakim, Sanjay Kumar Tiwary and Shailendra Kumar Shukla, for the Appellant; Rajeeva Sharma, for Opp. Party Nos. 2, 3 and 4, R. Prasad Sinha and Rajesh for Opp. Party No. 5, for the Respondent

Final Decision : Allowed

Judgement

J.N. Dubey, J.—This revision is directed against the order dated 27.9.1989 of the Additional Sessions Judge, Pakur.

2. It appears that the Executive Magistrate, Pakur initiated proceedings u/s 145 Code of Criminal Procedure on the basis of the application dated 4.5.1978 of Shankar Rai, predecessor in interest of the O.P. Nos. 2 and 3, and Bipin Rai. The applicant and the O.P. No. 7, Baccha Tiwary appeared before the Executive Magistrate and filed their written statements specifically denying that there was any apprehension of breach of peace between the parties. The Executive Magistrate proceeded to record the evidence of the parties. The applicant led evidence to show that he was in actual possession of the land in dispute. On the other hand, Shankar Rai and Bipin Rai, at whose instance the proceeding was initiated, led evidence to show that the O.P. No. 7, Baccha Tiwari was in possession thereof. Baccha Tiwary also led evidence in support of his claim that he was in possession of the land in dispute u/s 22 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949. The Executive Magistrate, on his

coming to the conclusion that the applicant was in actual physical possession of the land in dispute, vide his order dated 5.8.1987 restrained the Opposite parties from interfering in his peaceful possession thereon till the decision to the contrary of some Court of competent jurisdiction. O.P. No. 7, Baccha Tiwary filed revision, which was allowed by the Additional Sessions Judge, Pakur on 27.9.1989. Feeling aggrieved, the applicant has filed this revision.

3. Heard the learned Counsel for the parties and perused the record.

4. Learned Counsel for the applicant contended that the Additional Sessions Judge was not legally justified in setting aside the order of the Executive Magistrate on the ground that although he had found the applicant in actual physical possession of the land in dispute, he has not specifically stated that the applicant was in actual physical possession of the land on the date of initiation of the proceedings. He further contended that even assuming that the order of the Executive Magistrate was not in accordance with law, the Additional Sessions Judge could have either himself decided the case on merit or remanded the same to the Executive Magistrate for deciding afresh on merit. Not having done so he has committed an error apparent on the face of the record.

5. I find substance in the argument of the learned Counsel. In order to appreciate this aspect of the case paragraphs 22 and 23 of the order of the Additional Sessions Judge are reproduced below:

22. It is a fact that Lakhpati Rai has got a very good case in respect of his title to own and possess the disputed land but this can be decided only by a Civil Court of competent jurisdiction. The order of the learned lower court on the point of possession suffers from illegality. It is none of the business of this revisional court to decide the possession of the parties. I am simply to examine the legality, propriety and material regularity of the order in question. I am of the view, as discussed above, that the findings of the learned lower court on the point of possession are not sound. The order is illegal and improper.

23. In the result, the revision is allowed and the impugned order is set aside.

From the above, it is clear that the Additional Sessions Judge has neither himself decided the case on merit nor remanded the same to the Executive Magistrate for deciding it afresh. The result is that while the order of the Executive Magistrate holding the applicant in possession has been set aside, no other party has been declared to be in possession thereof. The order of the Additional Sessions Judge is patently illegal and is liable to be set aside.

6. Ordinarily, after setting aside the order of the Additional Sessions Judge I would have remanded the case to him for deciding afresh in accordance with law, but in view of the fact that the proceedings u/s 145 Code of Criminal Procedure were initiated No. 11.5.1978 and the order dated 5.8.1978 and the order dated 5.8.1987 of the Executive Magistrate has also operated for such a long time in view of the stay order dated 8.8.1990 of this Court, I am not inclined to do so.

7. The purpose of summary proceedings u/s 145 Code of Criminal Procedure is to meet the urgent situation pending decision of the dispute between the parties by a Court of competent jurisdiction and, as such, it will not be appropriate to prolong these proceedings any more. The aggrieved party can approach the Court of competent jurisdiction for declaration of his right in the land in dispute.

8. It will subserve the interest of justice if the order of the Additional Sessions Judge is set aside on the technical ground without entering into the merit of the case in detail.

9. The revision is, accordingly allowed and the order dated 27.9.1989 of the Additional Sessions Judge, Pakur is set aside.