
(2013) 01 JH CK 0123
In the Jharkhand High Court
Case No : Criminal Revision No. 452 of 2008

Lakshmi Upadhaya

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 145(1)

Citation : (2013) 2 AJR 405 : (2013) 2 JLJR 473

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant; Amit Kumar Das, Advocate for the O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioner and learned counsel for the State, as also learned counsel for opposite party No. 2. The petitioner is aggrieved by the order dated 16th May 2008 passed by the learned 4th Addl. Sessions Judge, East Singhbhum at Jamshedpur, in Criminal Revision No. 140 of 2007, whereby the revisional Court below has set aside the order dated 12.3.2007 passed by the learned Executive Magistrate, Dhalbhum, Jamshedpur, in Misc. Case No. 498 of 2003/T.R. No. 348 of 2003 in a proceeding u/s 145 of the Cr.P.C., whereby, the possession of the second party-petitioner was declared by the learned Executive Magistrate over the land in dispute.

2 It appears that due to dispute over the possession of the land in question the proceeding u/s 144 of the Cr.P.C. was initiated on the basis of the police report dated 16.5.2003 between both the parties Subsequently, the proceeding was converted into Section 145 of the Cr.P.C., by order dated 11.7.2003. The land in question is bearing Plot Nos. 2150 and 4392 under Khata No. 352, situated in front of Moon City, Rajeev Path, Olidih in the District of East Singhbhum, measuring about 5 kathas. The original owner of the land was one Baidyanath Gaur. The first party claimed the land on the basis of the Power of Attorney,

whereas the 2nd party claimed the possession over the land in question on the basis of sale deed and the documents showing mutation of land in her favour and also other documents. The case of the first party in the Court below was that they were in possession of the land in dispute on the basis of Power of Attorney and they had also made construction on the land, but the second party tried to dispossess the first party. The case of the second party was that the land was purchased through sale deed and the same was also mutated and the rent receipt were also issued. The case of the second party was that she was in possession of the land in dispute by constructing her house thereon.

3 The order dated 12.3.2007 passed by the learned Executive Magistrate shows that in course of proceeding, four witnesses were examined on behalf of the first party including the opposite party No. 2 himself and the first party proved five documents in the Court below, which included the Power of Attorney and two deeds of cancellation of sale deeds executed by the original owner Baidyanath Gaur. The second party-petitioner examined nine witnesses and the documents proved by the second party-petitioner included the sale deed with respect to the land in question, the correction slip with respect to mutation of the land in dispute, rent receipts, the deed of revocation of Power of Attorney issued in favour of first party, the document showing the electrical connection, etc. The order shows that the witnesses examined on behalf of the first party also admitted the possession of the second party and the witnesses examined on behalf of the second party claimed the possession over the land in dispute stating that the second party had constructed a house thereon and was living in the said house with her family.

4 Taking into consideration the evidence on record, the learned Executive Magistrate declared that the second party petitioner was having the possession over the land in dispute and prevented the first party from interfering into the possession of the second party till any contrary order passed by a competent Court.

5 Aggrieved by the said order, the first party preferred a revision before the Court of Sessions Judge, Jamshedpur, which was ultimately decided by the learned 4th Additional Sessions Judge, Jamshedpur, who, by the impugned order dated 16.5.2008, set aside the order passed by the learned Executive Magistrate. It may be stated that the Revisional Court below only set aside the order passed by the Executive Magistrate, without remanding the matter for a fresh decision, or without deciding the possession of any party over the land in dispute.

6 From the impugned order, it appears that the Revisional Court below had taken into consideration the police report dated 16.5.2003, in which, it is mentioned that the second party was trying to take possession over the land in dispute and they were arrogant, and the concluding portion of a police report dated 20.6.2003 which showed that the second party was living in a room with her family. The Court below also took into consideration the order dated 12.7.2003 passed in Miscellaneous Case No. 498 of 2003 while converting the proceeding u/

s 145 of the Cr.P.C., whereby the Court had observed that the second party stealthily getting the opportunity, illegally came in possession by dispossessing the previous possession of the first party. The Court below accordingly, concluded that two months prior to the initiation of the proceeding, the first party was in possession and accordingly, set aside the order passed by the learned Executive Magistrate.

7. Learned counsel for the petitioner has submitted that the impugned order passed by the Revisional Court below is absolutely illegal, in as much as, the possession of the second party was declared on the basis of the evidence brought on record in course of the proceeding and the evidence was taken after the police reports and the observation of the Court while converting the proceeding u/s 145 of the Cr.P.C., and these observation and the police reports cannot take precedence over the evidence that was adduced in course of the proceeding in the Court below. Learned counsel accordingly, submitted that the impugned order cannot be sustained in the eyes of law.

8. Learned counsel for the State, as also learned counsel for the opposite party No. 2, on the other hand, have submitted that there is no illegality in the impugned order passed by the Revisional Court below, in view of its finding that in the police reports, it had come that the second party was trying to take possession over the land in dispute and while converting the proceeding into Section 145 of the Cr.P.C., the Court had observed that the second party stealthily getting the opportunity, illegally came in possession by dispossessing the previous possession of the first party. Learned counsel accordingly, submitted that this clearly shows that the opposite party No. 2 was in possession of the land in dispute two months prior to the initiation of the proceeding and he was dispossessed only during the pendency of the proceeding and accordingly, there is no illegality in the impugned order passed by the Court below worth interference in the revisional jurisdiction.

9. It is well settled that in a proceeding u/s 145 of the Cr.P.C., the title or claim of the party is not to be decided, rather, it has to be seen as to which party was in possession over the property and if it is found that the party having the possession over the property had been forcibly or wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order u/s 145(1) of the Cr.P.C., the Magistrate may treat the party so dispossessed to be in possession on the date of his order u/s 145(1) of the Cr.P.C. In the present case the fact remains that even the witnesses examined by the first party opposite party No. 2 in the Court below had admitted that the second party was in possession over the land in dispute and the witnesses examined by the second party petitioner in the Court below proved the fact that the petitioner was living on the land in dispute after constructing her house thereon. The oral evidence of possession of the petitioner was also supported with the documentary evidence, such as sale deed executed in favour of the

petitioner, the documents of mutation, the rent receipts, as also the electrical connection issued in favour of the petitioner. The learned Executive Magistrate, on the basis of the evidence brought on record by both the parties in course of the proceeding, declared the possession of the second party petitioner over the land in dispute. I find force in the submission of the learned counsel for the petitioner that the observation of the Court at the time of converting the proceeding into Section 145 of the Cr.P.C., or the police reports cannot take precedence over the evidence that was adduced in course of the proceeding in the Court below. In that view of the matter, I am of the considered view that the impugned order passed by the Revisional Court below cannot be sustained in the eyes of law. The opposite party No. 2, if he has any right, title, interest and possession over the land in dispute, may move the Court of competent jurisdiction for appropriate relief, but there cannot be any interference by him in the possession of the second party over the land in dispute, until any decree is passed in his favour by the competent Court. Accordingly, the impugned order dated 16.5.2008 passed by the learned 4th Additional Sessions Judge, East Singhbhum at Jamshedpur, in Criminal Revision No. 140 of 2007 is, hereby, set aside and the order dated 12.3.2007 passed by the learned Executive Magistrate, Dhalbhum, Jamshedpur, in Misc. Case No. 498 of 2003/T.R. No. 348 of 2003, is hereby, upheld This criminal revision application is accordingly, allowed.