
(2009) 03 JH CK 0037
In the Jharkhand High Court

Mangal Hembrum

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2009) 03 JH CK 0037

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—In this Cr.M.P. the petitioner has prayed for quashing the revisional order dated 25.1.05 whereby learned Revisional Court has dismissed the revision petition and upheld the order of learned Magistrate passed In T.R.Case No. 253/2000 declaring possession of the second party-O.P. Nos. 2-4.

2. Learned Counsel appearing on behalf of the petitioner submitted that learned Magistrate has not properly scrutinized the oral and documentary evidences adduced before him and has erroneously declared possession of the opposite parties. The land in dispute was recorded in the name of Dukhl Hembrum and Chandan Hembrum. Dukhl Hembrum had no male issue. He died leaving behind his three daughters, namely, Barkl, Solma and Champa. Chandan Hembrum came in exclusive possession of the said land. The petitioner is the successor-in-interest of the said Chandan Hembrum and he inherited all the properties including the land in dispute and he has been in exclusive possession of the said land. The opposite parties claimed possession over the said land of Dukhl Hembrum as "Gharjamal" as husband of the O.P. No. 3-the daughter of Dukhl Hembrum. It has been submitted that the documents produced by the opposite parties are all forged documents. Learned Executive Magistrate had erroneously relied upon such evidences and declared possession of the opposite parties over the land In question. Aggrieved by the said order of the Executive Magistrate, the petitioner had preferred Cr. Revision No. 48/03|37/04 before learned Sessions

Judge, Godda. The said criminal revision was finally heard and decided by the 5th Additional Sessions Judge, F.T.C. No. II, Godda. Learned Revisional Court too, failed to appreciate the grounds taken by the petitioner and erroneously upheld the order of the Executive Magistrate and dismissed the revision application. Learned Revisional Court erroneously held that the claim of title made by the petitioner can be only determined by the CM Court of competent Jurisdiction.

3. Learned A.P.P. supported the Impugned orders. It has been submitted that the learned Executive Magistrate has thoroughly considered the facts and evidences on record and passed a well reasoned order declaring possession of the opposite patties. Learned Revisional Court has considered the points raised by the petitioner and found no substance. The petitioner has, in garb, filed this petition for re-revision by this Court which is barred under law. The petition is thus liable to be dismissed.

4. I have heard learned Counsel for the patties and perused the materials on record including the Impugned orders. The Executive Magistrate after due discussion and consideration of the materials on record has declared possession of the opposite parties over the land In question and restrained the first party until an order was passed by the Civil Court of competent jurisdiction. Learned Executive Magistrate has arrived at the said conclusions on thorough scrutiny of the evidences brought by the parties on record. The petitioner has challenged the said findings of the Executive Magistrate before the Revisional Court. Learned Additional Sessions Judge has found the said grounds quite flimsy. It has been observed that the petitioner has sought revision of the order on factual grounds challenging the findings of learned Magistrate. The order of learned Magistrate is based on thorough appraisal of the evidences. He found that there was ample documentary evidence in favour of the opposite parties, much superior to the evidence brought by the first party. Learned Magistrate after thorough scrutiny has declared possession of the second party over the land in question. The petitioner has raised the issue of title which can be decided by the Civil Court of competent jurisdiction. Learned Counsel for the petitioner has repeated the same grounds before this Court which were raised in revision. Learned Courts below after due consideration of the evidences have found the second party in possession of the said land. This Court in exercise of its jurisdiction u/s 482 Cr.P.C. cannot enter into a roving enquiry of the factual aspects and arrive at any finding on appraisal of the evidences. Both the impugned orders/Judgments have been challenged only on the ground of facts. No error of law could be pointed out on behalf of the petitioner/this petition. Further this petition in the garb, is the second revision which is barred under the provisions of 397 (3) CPC I, therefore, find no ground to entertain this petition. This Cr.M.P. is, accordingly, dismissed.