

(1985) 11 PAT CK 0027

In the Patna High Court

Case No : Criminal Revision No. 665 of 1984

Mostt. Sajda Khatoon

APPELLANT

Vs

The State of Bihar and 23 Others

RESPONDENT

Date of Decision : 21-11-1985

Acts Referred:

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

Citation : (1985) PLJR 120

Hon'ble Judges : Phani Bhushan Pd., J

Bench : Single Bench

Advocate : Bindeshwar Pd. Sinha, Syed Raza Ahmad and Shailendra Pd. Mishra, for the Appellant; H. Angar and Farooque Mohazzam, for the Opp. party No. 3 and M/s A. Bose, Kaushal Kumar and S.P. Gupta for the Opp. party No. 24, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Prasad, J.—The sole petitioner has challenged the validity of the order dated 17.5.1984 by which the proceeding u/s 145 Cr.P.C. has been dropped on account of death of Fahimuddin, first party. It appears that Fahimuddin, the first party, had filed an application for action u/s 144 Cr.P.C. against the petitioner and other members of the opposite party, on the basis of which a proceeding u/s 144 Cr.P.C. was drawn up on 24.10.1968. The said petition of Fahimuddin was sent to the police for inquiry and report. There after the police submitted its report on the basis of which proceeding u/s 144 Cr.P.C. was drawn up. It appears that on 10.12.1968 the said proceeding was converted into one u/s 145 Cr.P.C. The parties thereafter filed their written statements in the Court below. By order dated 31.3.84/8.4.81 the learned Subdivisional Magistrate disposed of the case and declared the possession of the State of Bihar over the land in dispute showing the land in question to be Gairmajarua Aam. Against the said order, a revision application was preferred before the District and Sessions Judge, Nalanda Bihar Sharif and some of the parties preferred revision applications before this Hon"ble Court. It appears that three revision applications were heard,

out of which one Criminal Revision application no. 491/83 was allowed and other two Revision Application nos. 695/81 and 747/81 were remanded to the Court below. Thereafter it appears that the Court below issued notices to the concerned parties. On 17.5.1984 on behalf of the State it was pointed out that the first party Fahimuddin, had died four months back and that no substitution petition had been filed on behalf of his heirs and, as such, a prayer was made for dropping of the proceeding. Learned counsel for the petitioner was also heard and there after the proceeding was dropped.

2. From the above said order dated 17.5.84, it appears that no pairvl was done by other members of the second party in that proceeding. On behalf of the petitioner it has been contended that the order under challenge is arbitrary and against the order of this Court passed in Criminal Revision nos. 695/81 and 747/81. The learned Magistrate should not have dropped the proceeding rather he should have decided the possession of the parties in respect of those persons, who were already on the record of the case. Lastly it has been contended that the Court below has not acted according to the directions of this Hon"ble Court. According to the learned counsel for the petitioner, Fahimuddin, the first party, was the Thikedar of the petitioner and, as such his heirs have no interest in the property and their substitution was immaterial.

3. This revision application has been resisted by opposite party no. 3 and by Syed Abbas alias Madrasi Baba, who has filed counter-affidavit in this case, as opposite party no. 24. According to both of them the order under challenge is just and proper in the facts and circumstances of the case. From the counter-affidavit filed on behalf of opposite party no. 24 it appears that Title Suit no. 31/84 has been filed in the Court of the Subordinate Judge, Biharsharif, with respect to the disputed lands and, as such, it has been contended that there is no necessity for the proceeding u/s 145 Cr.P.C. It has been further asserted that in the said Title Suit no. 31/84 the State of Bihar and others have filed written statement and the petitioner has also filed an application for impleading her as intervenor and she has also claimed right over the disputed property.

4. In the instant case there is no dispute that Fahimuddin, who was first party, (died about four months earlier to the date of passing of the order under challenge, that is, before 17.5.84. No attempt was made by his heirs or other members of the party to the proceeding to bring his heirs on the record of the case. Sub-clause (7) of Section 145 Cr.P.C. runs as follows:-

"when any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any "question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto."

This clearly indicates that when any party to such proceeding dies his legal

representatives must be made parties to the proceeding, who, (sic) thereafter the Magistrate shall continue the proceeding. In the instant case up till now no legal representative of the first party, namely, Fahimuddin has been made party and as such, the inquiry can not proceed. Besides that the proceeding in question was initiated in the year 1968 and remained pending for a very long time. After the remand when the case came to the Court below, the parties were not very keen in its disposal rather all the parties had not cared to appear even after the receipt of the notice. Although a large number of parties" were there, none of them preferred the revision application except the petitioner.

5. From the counter-affidavit filed on behalf of opposite party no. 24. namely, Syed Abbas alias Madrasi Baba, it appears that Title Suit no. 31/84 has been filed with respect to the disputed property in which the petitioner has also filed an application for impleading her as an intervenor. In reply to the counter-affidavit filed on behalf of opposite party no. 24, nothing has been brought on the record to disbelieve the above disbelieve the above assertion of opposite party no. 24. In course of argument learned counsel appearing for opposite party no. 24 has referred to a decision in the case of Ram Sumer Puri Mahant Vs. The State of Uttar Pradesh and other (1985 P.L.J.R. 14) of the Supreme Court and on the basis of this decision learned counsel for opposite party no. 2 has submitted that when a civil litigation is pending for the same property there is no justification in initiating a parallel proceeding u/s 145 Cr.P.C.

6. On consideration of the above said decision, it appears that initiation of a proceeding u/s 145 Cr.P.C. when a Civil suit is pending for the same and will amount multiplicity, of litigation, which is not in the interest of the parties nor it is desirable to allow wastage of public time and money because in a proceeding u/s 145 Cr.P.C. the matter is not finally adjudicated and the matter ultimately does to a Civil Court, which decides finally the question of possession and title.

7. It is, however, to be noted that the proceeding was dropped in the month of May 1984, and since then more than 4 years have elapsed but there is no report on the record of the case regarding any apprehension of breach of the peace for the land in dispute. Admittedly Title Suit no. 31/84 is pending for the same land and the parties are now in a position to approach the Civil Court for an interim relief. In view of the discussions made above, the order under challenge does not require any interference. There is no merit in this application. It is accordingly dismissed.