
(2003) 10 PAT CK 0022

In the Patna High Court

Case No : Criminal Revision No. 479 of 2002

Mostt Saniharo Kuer (Since deceased)

APPELLANT

Vs

Sri Munilal Singh and Others

RESPONDENT

Date of Decision : 28-10-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2003) 3 BLJR 2362 : (2004) 1 PLJR 692

Hon'ble Judges : Chadramauli Kumar Prasad, J

Bench : Single Bench

Advocate : Shiv Nandan Pd. Singh and Jayanand, for the Appellant; Rajni Ranjan and Pd. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kumar Prasad, J.—This revision application is directed against the order dated 11-3-2002 passed by the Executive Magistrate, Piro district Bhojpur whereby in a proceeding u/s 145 of the Code of Criminal Procedure the learned Magistrate had declared the possession of second party-opposite party Nos. 1 to 4.

2. A proceeding u/s 144 of the Code of Criminal Procedure (for short the Code) was initiated in respect of land bearing Plot Nos. 1814, 20, 57, 1925, 811, 819 and 936 of village Barsi in the district of Bhojpur. In the said proceeding petitioner was the first party. She claims possession over the disputed land on the ground that it was recorded in the name of her father-in-law and after partition in the family the land fell in the share of her husband Jugeshar Singh and after his death, she being the sole heir, inherited the same. Her further case is that she is in possession of the land since then and paying the land rent and canal charges for the same. The case of the second party is that they have purchased the land through a registered sate deed dated 30th of July, 1961 for a consideration of Rs. 5,500/- and since then they are in possession of the land.

3. The learned Magistrate by order dated 20-2-1997 declared the possession of the second party, Petitioner aggrieved by the same preferred Criminal Revision No. 258 of 1997 and this Court by order dated 12th of October, 1999 allowed the revision application, set aside the order of the learned Magistrate dated 20-2-1997 and remitted the matter back to him to pass order in accordance with law and while doing so to consider the relevant documents. After remand the learned Magistrate considered the matter and by the impugned order declared the possession of the second party.

4. Mr. Shiv Nandan Prasad Singh appearing on behalf of the petitioner submits that the learned Magistrate had committed the same error while declaring the possession of the second party and had not considered the document filed by the first party-petitioner. This itself, according to the learned Counsel, vitiate the impugned order. Mr. Rajni Ranjan Prasad Singh appearing on behalf of opposite party Nos. 1 to 4 however, submits that the documents filed by the first party were considered and on appreciation of oral and documentary evidence adduced before the learned Magistrate, he found the possession of the second party and accordingly declared the possession and the said order is not fit to be interfered with by this Court in exercise of the revisional jurisdiction. He further points out that the first party in fact had resorted to the remedy of suit by filing Title Suit No. 101 of 2001 before the Munsif 1, Arrah and hence, interference in revision is not called for.

5. Having appreciated the rival contention I do not find any substance in the submission of the learned Counsel for the petitioner. The learned Magistrate has referred to the documents filed on behalf of the petitioner and on appraisal of the same he has found possession of the second party. Further, petitioner has resorted to the remedy of civil suit and hence final order passed u/s 145 of the Code is not fit to be interfered with by the this Court in its revisional jurisdiction.

6. I do not find any merit in the application and it is dismissed accordingly.