
(2008) 08 PAT CK 0068

In the Patna High Court

Case No : Criminal Miscellaneous No. 44785 of 2006

Ram Dular Prasad @ Ramdular Das and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227

Citation : (2009) 3 PLJR 1057

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—Heard Mr. Manan Kumar Mishra, Sr. Advocate for the petitioners, Sri Ranjan Kumar Srivastava, learned counsel for O.P. No. 2 and Sri Jharkhandi Upadhaya, the learned A.P.P. for the State. The petitioners have filed this application for the quashing of the order dated 2.8.2005 passed by the learned Additional Sessions Judge-I, Gopalganj, in Cr. Revision No. 558 of 2003, whereby he has dismissed the Cr. Revision and confirmed the order dated 20.11.2003 passed Sri J.S. Srivastava, learned Judicial Magistrate, 2nd Class, Gopalganj in Complaint Case No. 1899 of 2000 filed by the petitioners for their discharge.

2. It has been submitted by the learned counsel for the petitioners that there are two registered sale deeds dated 20.8.1996 and 19.8.1997 executed by the father of the complainant in favour of petitioner No. 1 in respect of R.S. Plot No. 11/2 having an area of 17 kathas 15 dhurs some three years prior to the date of occurrence. It has also been submitted that the complainant has already filed a Title Suit No. 324 of 1999 for declaration of title in his favour but in the said suit he had not challenged the validity and genuineness of these sale deeds executed by his father in favour of petitioner No. 1 and that being the position the petitioners' title is a perfect one. It is also submitted that an injunction petition was filed in the Civil Court which had been allowed but in Misc. Appeal No. 32 of

2000 filed by the petitioner the injunction order was set aside and it was observed that the complainant had no prima facie case in his favour to restrain the accused from going upon the disputed plot. It has also been observed that the accused of this case were bona fide transferees. Therefore, according to the learned counsel for the petitioners the allegation against the petitioners was totally false and fabricated. It has finally been submitted that notwithstanding presenting all these documents before the learned Magistrate in support of their claim for discharge the learned Magistrate had ignored all these documents and has rejected the prayer for discharge u/s 227 Cr.P.C. and the Revisional Court had followed suit.

3. Since this case arises out of complaint petition and the petitioners had filed a petition for their discharge and also brought to the notice of the court relevant documents to show their bona fide title in respect of the lands in question it was only appropriate and proper for the learned Magistrate to have considered the same and pass appropriate orders.

4. Accordingly the application is allowed and the matter is remitted back to the trial court for recording a fresh finding on the discharge petition filed by the petitioners, due regard being had to the fact that the title suit prior to time than the complaint petition itself in respect of the same land had been filed by the complainant and was pending adjudication and that two parallel proceedings for the same matter between the same party cannot go on simultaneously. Accordingly the application is allowed and the matter is remitted back to the court below for fresh consideration.