

(2019) 11 PAT CK 0060

In the Patna High Court

Case No : Criminal Miscellaneous No. 54225 Of 2017

Ram Pukar Jha And Anr

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 04-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 107, 144, 145, 146(1)

Citation : (2019) 11 PAT CK 0060

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Amaresh Kumar Sinha, Gopal Tiwari, Shyam Kumar Singh, Bhubneshwar Prasad

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.
2. The petitioners have challenged the entire proceeding in connection with M.R. No.991 of 2017 pending before the Sub-Divisional Magistrate, Samastipur. The petitioners have specifically challenged the order dated 25.07.2017 whereby a proceeding under Section 144 Cr.P.C. was initiated vide the aforesaid M.R. No.991 of 2017, order dated 15.09.2017 whereby the proceeding under Section 144 Cr.P.C. was converted into a proceeding under Section 145 Cr.P.C. and by filing I.A. No.1950 of 2018 the petitioners have further challenged the order of attachment dated 22.05.2018 passed in exercise of power under Section 146(1) Cr.P.C. in the aforesaid proceeding.
3. The challenge is on the ground that in view of the decree of a competent Civil Court and pendency of a civil suit wherein Opposite Party No.2 had prayed for ad interim injunction, the continuance of the proceeding before the criminal court would amount to abuse of the process of the Court.
4. The impugned proceeding relates to Plot No.2474 under Khata No.346, area one katha out of total area of two katha five dhurs in village B. Aloth, police

station Muffasil District- Samastipur.

One Bhola Jha has two sons:- petitioner No.1 Ram Pukar Jha and late Bhavdish Jha father of Opposite Party No.4 Sanjay Kumar. Bhola Jha died in the year 1968 and, thereafter, certain properties including 2 Katha 5 Dhurs of the plot under proceeding were purchased in the name of Sumitra Devi wife of Bhola Jha through different registered sale deeds.

5. The case and claim of the petitioners is that petitioner Ram Pukar Jha and his son petitioner No.2 Randhir Kumar Jha along with other family members were residing in Asam since long in connection with their job and business. Hence, taking advantage of their absence, father of Opposite Party No.2 brought Title Suit No.57 of 2004 in the Court of learned Sub Judge, Samastipur, for a declaration that whatever property is standing in the name of mother Sumitra Devi was purchased by plaintiff Bhavdish Jha. Petitioner No.1, who was not a party to the suit, intervened in the suit and was impleaded as defendant. The petitioners asserted in the suit that the land was purchased in the name of mother by major contribution of consideration money by the petitioners. The learned trial Judge held that since father of Opposite Party No.4 had no source of earning, no relief can be granted in his father and the trial Court held that both the brothers had half share in the property and the suit was dismissed on 18.08.2012. The dismissal is under challenge before this Court in F.A. No.214 of 2012.

6. Assertion of the petitioners is that both the brothers have already partitioned the property half each. Opposite Party No.4 constructed a house on 1 katha 2.5 dhurs allotted in Plot No.2474 and just to grab the vacant portion of the land of the petitioners got a collusive proceeding under Section 144 Cr.P.C. started in respect of the share of the petitioners which was in physical possession of the petitioners. In the meantime, Opposite Party No.2 got a registered sale deed from mother Sumitra Devi on 13.07.2017 in respect of the property standing in the name of Sumitra Devi. The petitioners have filed Title Suit No.317 of 2017 in the Court of learned Sub Judge, Samastipur, for cancellation of sale deed aforesaid. Opposite Party No.4 has prayed for an order of ad interim injunction in Title Suit No.317 of 2017 and it has been informed that hearing of that petition is still pending.

7. Learned counsel for the petitioners submits that in the aforesaid background when adjudication of the real dispute of title is pending before the appellate forum as well in a subsequently instituted suit, the criminal proceeding under Section 145 Cr.P.C. is an abuse of the process of the Court, especially the order of attachment of 1 katha of land, which is against the report of the Circle Officer that the petitioners were in possession of the land under proceeding. Moreover, the learned Magistrate has not recorded that the case is one of the emergency, or if he decides that none of the parties was then in such possession as on date of order under Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, it could have passed

the order of attachment. However, the impugned order would reveal that the learned Magistrate has not considered the aforesaid requirement of law to exercise power under Section 146 Cr.P.C. As such, the said order is based on erroneous consideration of law and material on the record. Learned counsel has referred to the detailed report of Circle Officer dated 29.05.2018 addressed to the learned Court-below wherein it is specifically stated that in view of the pendency of civil dispute in competent civil Courts the continuation of the proceeding is not consistent with law and both the parties were in possession of the respective area of the plot under proceeding separately.

8. Learned counsel for Opposite Party No.4 contends that Opposite Party No.4 has asserted in the counter affidavit that there is still dispute for possession on the land under proceeding between the parties and there is apprehension of breach of peace. Moreover, the learned Court-below has taken into consideration the existence of both; the disputes for possession and apprehension of breach of peace. Hence, this Court should not interfere with the discretion exercised by the learned Magistrate especially when the impugned proceeding is a preventive proceeding so that breach of peace may not be committed. Learned counsel submits that the subsequent suit was filed during pendency of the proceeding under Section 145 Cr.P.C. Hence, under Section 145 Cr.P.C. proceeding cannot be quashed as held by a learned single Judge of this Court in the case of Md. Parvej @ Tuntun and another Vs. The State of Bihar and Another reported in 2018(1) PLJR 166.

9. A competent Civil Court in Title Suit No.57 of 2004 has already held that both the brothers had joint claim on Plot No.2474 which is subject matter of the proceeding. The decree of the Civil Court has neither been set aside nor stayed upto now in the pending First Appeal. Therefore, either the claim put forth by the petitioners that the property was partitioned between the two brothers is acceptable or the verdict of the competent Court is acceptable that the property is jointly owned by the petitioners and Opposite Party No.4.

10. Since proceeding has been initiated only on 1 katha of Plot No.2474 out of total area of 2 katha 5 dhurs. Hence, it may be presumed that the property was already partitioned. Opposite Party No.4 has not denied that he has already constructed a house on the half portion of the land under proceeding allotted to his share. Hence, the factum of partition can be assumed from this angle also. Therefore, the case of Md. Parvej (supra) is not applicable in the present facts and circumstances of this case wherein civil right of the parties in respect of the land under proceeding was already decided by a competent Court prior to the initiation of the impugned proceeding. The subsequent suit i.e., Title Suit No.317 of 2017 relates to a subsequent cause of action arising out of execution of sale deed by Sumitra Devi in favour of respondent No.4 on 13.07.2017 and the suit was filed for cancellation of that sale deed. In the civil suit there is scope of ad interim injunction and for that there is pending petition to decide which of the party should be restrained from going over the land. Therefore, the impugned

proceeding is apparently an abuse of the process of the Court. Simple apprehension of breach of peace between the two parties can be prevented by initiation of a proceeding under Section 107 Cr.P.C. if the circumstance so requires. However, dispute relating to possession cannot be decided by a criminal Court in the impugned proceeding for the reason that a competent Civil Court has already decided the issue and further adjudication of dispute is pending before the competent Civil Court.

11. Therefore, in my view, the entire criminal proceeding and the impugned orders passed during the pendency of the proceeding bearing M.R. No.991 of 2017 results in miscarriage of justice, hence stands hereby quashed and this application is allowed.