
(2011) 07 PAT CK 0048

In the Patna High Court

Case No : Criminal Revision No. 879 of 2001

Ramashish Mishra, Ram Gulam Mishra, Arjun Mishra and
Suresh Mishra

APPELLANT

Vs

State of Bihar, Purendra Sahu and Chunchun Mishra

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

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

Citation : (2011) 07 PAT CK 0048

Hon'ble Judges : Amaresh Kumar Lal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amaresh Kumar Lal, J.—The second party-Petitioners have preferred this revision application against the order dated 25.09.2001 passed by the learned Executive Magistrate, Sadar, Madhubani in M.R. No. 503/89, Trial No. 39/01 u/s 145 Code of Criminal Procedure by which the possession of the first party-opposite party No. 2 has been declared over the land in dispute bearing Khata No. 114, Plot No. 1292, Area 18 Dhurs, Mauza-Bardaha and the Petitioners have been restrained from disturbing the possession of the first party opposite party No. 2.

2. On a petition filed on behalf of the opposite party No. 2, a report was called for from the police and on the basis of the police report, a proceeding u/s 144 Code of Criminal Procedure was initiated by the learned Sub-Divisional Magistrate, it was later on converted into a proceeding u/s 145 Code of Criminal Procedure According to the Petitioners, the land in dispute belongs to one Budhan Halwai, he sold the land in favour of Raghunandan Jha and Madhu Jha prior to cadastral survey and father of the Petitioners acquired the land from the decedents of Raghunandan Jha and the members of the second party (Petitioners and opposite party No. 3) are in possession of the land. The first party-opposite party No. 2 has claimed to be the decedents of Budhan Sah. It has been stated by the first party-opposite party that the land bearing survey plot No. 1292

measuring an area of 18 Dhurs was own and possessed by him and the Petitioners wanted to disturb his possession. It has also been alleged that the Petitioners have got no document and inspite of that they are creating trouble.

3. The learned Magistrate had declared the possession of the first party vide order dated 25.06.1992. The Petitioners and the opposite party No. 3 preferred Criminal Revision No. 619/92 in the Patna High Court. The learned Magistrate has declared the possession of the land in dispute in favour of the second party-opposite party on the basis of oral evidence and the documents filed on behalf of the parties, but he has failed to discuss all the documents and decided the case in favour of the opposite party simply mentioning some parts of the documents. The revision application was allowed on 1.10.1999 by this Court after setting aside the order dated 25.06.1992 passed by the learned Executive Magistrate and the matter was remitted back for disposal in accordance with law after discussing all the relevant documents.

4. The learned Counsel for the Petitioners has assailed the impugned order mainly on two grounds that the learned Executive Magistrate did not consider most of the relevant documents filed on behalf of the Petitioners as well as the opposite parties and secondly that the learned Magistrate has also based his orders on the police report, which has not been exhibited in that case. His contention is that the documents, which have not been exhibited, cannot be put into consideration for coming to a decision. In support of his contention, he has referred to a decision in the case of Bhun Thakur and Ors. v. Jagdeo Beldar and Anr. reported in 1981 BBCJ 247.

5. Learned Counsel for the first party-opposite party has vehemently opposed the arguments raised by the learned Counsel for the Petitioners.

6. On perusal of the impugned order, it appears that the learned Magistrate has declared the possession of the land in dispute in favour of the first party-opposite party on the basis of the oral evidence and the documents filed on behalf of the parties, but he has failed to discuss all the documents. It further appears from the impugned order that he has also based his conclusion on the basis of the police report, which has not been exhibited in this case. Therefore, in my opinion, the impugned order is not fit to be sustained. It appears that a proceeding u/s 144 Code of Criminal Procedure was initiated vide order dated 29.05.1989 and it was converted later on into a proceeding u/s 145 Code of Criminal Procedure vide order dated 27.07.1989. There is no document on the record to show that there has been any apprehension of breach of peace by the parties for the last 16 years. Now, it is not required to remit back this case again to the learned Executive Magistrate. The parties are at liberty to seek their remedies in accordance with law, if so advised.

7. In the result, this revision application is allowed.