

(1985) 09 PAT CK 0034

In the Patna High Court

Case No : Criminal Miscellaneous No. 3270 of 1985

Subash Prasad Singh and 4 others

APPELLANT

Vs

The state of Bihar and 8 others

RESPONDENT

Date of Decision : 11-09-1985

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 37, 39, 4(c)

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 482

Citation : (1985) PLJR 1176

Hon'ble Judges : K.B. Sinha, J

Bench : Single Bench

Advocate : L.S. Sinha and Birendra Singh, for the Appellant; Srinandan Pd. Singh, Murari Narain Chaudhary, Pramod Kumar Sinha and Ashok Kumar, for the Respondent

Final Decision : Allowed

Judgement

Krishna Ballabh Sinha, J

1. This application u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") is directed against the order dated 22.3.1985 by which the Subdivisional Magistrate, Jahanabad, initiated a proceeding u/s 145 of the Code with regard to some plots of land situated in village Deogghra within Kako Police station in the district of Gaya. A proceeding u/s 144 of the Code was started with regard to the said plots on the basis of a report submitted by the police on 4.1.1985. The petitioners as well as the members of the opposite party filed their show cause and produced some documents in the Court below. After hearing the parties, the Subdivisional Magistrate converted the proceeding into one u/s 145 of the Code by the impugned order.

2. The petitioners figured as 1st Party in the Court below and the members of the opposite party as the 2nd Party. The case of the petitioners, in brief, is that the disputed plots were acquired by Rash Bihari Singh, Keshwar Singh and Bambhola

Singh prior to the cadastral survey. The share of Rash Bihari Singh in the disputed land was to the extent of -/12/- annas and remaining -/4/- annas belonged jointly to Keshwar Singh and Bambhola Singh and, accordingly, their names were recorded in the record of rights in the cadastral survey. After some time a partition took place and the parties came in possession of the land allotted to them according to their respective share.

3. Rash Bihari Singh executed a registered deed of gift on 31.3.41 in favour of his daughter-in-law, Daulat Kuer, who came in possession of the property and her name was mutated in the record of the landlord. Daulat Kuer died leaving behind her only heir, Radhika Kuer, who is the wife of petitioner No. 5. Her sons are petitioner Nos. 1 to 4 in this petition. The petitioners claim to be in cultivating possession of the land from the date of execution of the said deed of gift.

4. The case of the opposite party, on the other hand, is that Rash Bihari Singh never acquired the land as his personal property. He was Karta of the family at the time of cadastral survey and taking advantage of his position, he managed to get the land recorded in the record of rights as well as in the revenue records incorrectly. It is also disputed that the land in question was gifted by Rash Bihari Singh to Daulat Kuer. According to their case, the disputed land has always remained the property of the joint family which was acquired by Ganpat Singh, the common ancestors of the parties.

5. It is also asserted on behalf of the petitioner that Partition Suit No. 76 of 1951 was instituted by Alakh Singh, father of opposite party Nos. 2 and 3, against Daulat Kuer in the Court of Sub-Judge, Gaya, which was decreed in part and it was held that the gift executed by Rash Bihari Singh in favour of Daulat Kuer was genuine as the former had purchased the property out of his own personal income. An appeal was filed by the plaintiff which was also dismissed. It was held by the appellate Court that 3/4th of the disputed land was acquired by Rash Bihari Singh separately and the joint family had no concern with it at any time. The appellate Court further held that Rash Bihari Singh was perfectly justified and entitled to execute the two deeds of gift.

6. The opposite party has filed a photostat copy (Annexure "A") of the order passed by the Subordinate Judge, Jahanabad, in the said partition suit, from which it appears that the suit abated under the provisions of section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as "the Consolidation Act")- It is urged on behalf of the opposite party that, in view of the said order, the partition suit did not reach the stage of finality. On perusal of the said order (Annexure "A") it is manifest that the proceeding for preparation of final decree only was held to have abated. It has been made clear that as no appeal was pending against the preliminary decree so the proceeding for preparation of final decree only had abated.

7. Apart from this partition suit, another proceeding was also fought between,

the parties. It appears that the scheme for consolidation of holding was introduced in the village during the pendency of the partition suit before preparation of the final decree. The names of the petitioners were recorded in the register prepared under the Consolidation Act. Opposite Party No. 2 filed an objection before the Consolidation Officer which was rejected on 15.3.1983. Thereafter an appeal was preferred against the said order before the Deputy Director of Consolidation which was also dismissed on 27.4.1983. These facts are not disputed by the opposite party. However, it is urged on their behalf that a revision petition against the order of the Deputy Director of Consolidation is still pending before the Director of Consolidation.

8. It is relevant to mention here that detailed discussion of the partition suit and the consolidation proceedings are not necessary for disposal of this petition but reference of the same have been made, in view of the points urged on behalf of the parties.

9. It is contended on behalf of the petitioners that the impugned order was passed by the Subdivisional Magistrate in a mechanical way without proper consideration of the materials available on the record. It is urged that right from the year 1960 the Civil Courts have been giving the findings in favour of the petitioners or their predecessors-interest. Even during the consolidation proceeding, the Consolidation Officer as well as the Dept. Director of Consolidation have recorded (Sic) findings regarding title and possession over the disputed land in their favour. It is submitted that the initiation of the proceedings u/s 145 of the Code, in the circumstances mentioned above, is unwarranted and amounts to abuse of process of the Court.

10. On behalf of the opposite party it is contended that there is no rule of law that a proceeding u/s 145 of the Code can-not be initiated for the land for which a civil suit is pending. It is further contended that the purpose for initiation of a proceeding u/s 145 of the Code is primarily to prevent the breach of the peace, likely to be created on account of dispute over any immovable property and as such the impugned order passed by the Subdivisional Magistrate is not without jurisdiction or in any way bad in law.

11. Therefore, the point which falls for adjudication is whether a proceeding u/s 145 of the Code can be initiated during the pendency or immediately after disposal of a civil suit with regard to the same land. It is not disputed, and rightly so, on behalf of the opposite party that a Criminal Court while acting under the provisions of section 145 of the Code cannot ignore and has to respect the order passed by a Civil Court unless it is of remote past. As mentioned above, the appeal filed on behalf of the defendants in the partition suit against the preliminary decree was dismissed. It, therefore, follows that preliminary decree has become final and the partition suit had abated only at the stage of preparation of the final decree. Admittedly the objection raised on behalf of the opposite party before the Consolidation Officer was rejected and the appeal at their instance also failed before the Deputy Director of Consolidation.

12. It is relevant at this stage to notice some provisions of the Consolidation Act. Section 37 of the Act creates a bar to the jurisdiction of civil courts which is thus:

37. Bur of jurisdiction of civil courts. No civil courts shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which proceeding could or ought to have been taken under this Act.

The next relevant section is section 39 of the Act which reads thus:-

39. Provisions of this Act to prevail over other Acts. - The provisions of this Act shall have effect, notwithstanding anything to the contrary contained in any other law for the time being in force.

On a plain reading of the said two sections it is manifest that the decision of the Consolidation Officer cannot be challenged in any civil court and in that sense it is final. In a proceeding u/s 145 of the Code, the Magistrate declares a party to be entitled to possession of the property until evicted therefrom in due course of law. The order passed u/s 145 of the Code is more or less an interim order till it is set aside by a competent court of law. In the case of Nagendra Narain v. Lakshman (1984 BBCJ 316), a Bench of this Court has held that, in a proceeding u/s 145 of the Code, the right, title and interest of the parties are not adjudicated-The Magistrate has to decide the dispute of possession regarding immovable property primarily for the purpose of maintaining peace. As the order passed in a consolidation proceeding cannot be challenged in a Civil Court, the Magistrate cannot ignore the decision taken by the consolidation authorities and it is binding on him.

13. A similar point fell for consideration in the case of Ram Kumar v. State of U.P. (1985 BBCJ (SC) 37 : 1985 PLJR (SC) 14). In that case the High Court had refused to interfere with the order for initiation of a proceeding u/s 145 of the Code in the re-visional jurisdiction. It appears that there was a suit for possession as well as injunction which was dismissed and an appeal was pending with regard to the property in question. It has been observed by the Supreme Court that when a civil litigation is pending for the same property wherein the question of Possession is involved and has been adjudicated there could be hardly any justification for initiating a parallel criminal proceeding u/s 145 of the Code. It was also observed that there was no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in such matters.

14. In the instant case, the Consolidation Officer and the Deputy Director of Consolidation gave finding in favour of the petitioners with regard to the title and possession over the disputed land. So far as the partition suit is concerned, only the preparation of final decree had abated. In such circumstances, in my view, there was no justification for the Subdivisional Magistrate to initiate a proceeding u/s 145 of the Code. Accordingly, I hold that the impugned order cannot be maintained. In the result, this petition is allowed and the impugned order dated

22.3.1985 is set aside. It need not be mentioned that the magistrate may take other preventive measures to maintain peace if the existing situation so demands.