
(2009) 08 PAT CK 0111

In the Patna High Court

Case No : Criminal Revision No. 120 of 2002

Sundari Devi and Others

APPELLANT

Vs

Dudheshwar Singh, Shatrughan Singh and The State of Bihar

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Citation : (2009) 08 PAT CK 0111

Final Decision : Allowed

Judgement

Mandhata Singh, J.—This application is directed against the order dated 4.12.2001 passed by Sub-divisional Judicial Magistrate, Sadar Gaya in Misc. Case No. 1315 of 2001 by which a proceeding u/s 144 Cr.P.C has been converted into one u/s 145 Cr.P.C.

2. Initially a petition was given on behalf of opposite party No. 1 and 2 concerning apprehension of breach of peace for the land which was subject matter of Second Appeal pending before the High Court without mentioning number of second appeal basing which a proceeding u/s 144 Cr.P.C. was initiated. Parties were asked to show cause. They filed their respective show cause giving detail of the disputed land, admitting that ownership and possession was challenged in a T.S. No. 22/76 in which ownership as well as the possession was claimed by both the parties but decided in favour of petitioners that was confirmed in appeal (T.A. No. 44/98) also but even then opposite party No. 2 was apprehending breach of peace, proceeding was converted into one u/s 145 Cr.P.C.

3. Now the only question remains to decide by this Court is whether the criminal Court can pass any order u/s 145 Cr.P.C, when the matter is decided by competent civil court in its trial and in appeal and thereafter pending before the High Court in S.A. No. 33/2000. If any order is passed u/s 145 Cr.P.C. that is subject to decision of competent Court that is Civil Court in connection with possession over land. In this case concurrently two Courts - trial as well as appellate court have decided right, title and possession over the disputed land of the parties, decree of which is valid and effective till set aside, reverse or

deviated by second appellate court but that is not done. At present both the decrees are fully effective. Though there is no need to further make reference of any decision of the High Court or Apex Court that even the proceeding already initiated shall be dropped whenever it comes before the Court (Magistrate) where the matter is pending.

4. Reference can be made of a judgment of the Apex Court in the case of Ram Sumer Puri Mahant Vs. State of U.P. and Others, in which their Lordships have clearly observed which reads as follows:

When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceeding under Section. 145 of the Code would not be justified. The parallel proceedings should not be permitted to continue and in the event of a decree of the civil Court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. Decision of Allahabad High Court, Reversed.

5. In the instant case, proceeding u/s 144 Cr.P.C. has been converted into one u/s 145 Cr.P.C. that means initiation of proceeding even after having knowledge of decision of a competent court that cannot be allowed to continue for a moment.

6. Accordingly, this revision application is allowed and the order dated 4.12.2001 passed by Sub-divisional Judicial Magistrate, Sadar Gaya in Misc. Case No. 1315 of 2001 is set aside.