

(1999) 12 PAT CK 0016

In the Patna High Court

Case No : Criminal Revision No. 346 of 1998

Surendra Prasad Verma

APPELLANT

Vs

The State of Bihar, Bibi Sahana Khatoon and Md. Soslim

RESPONDENT

Date of Decision : 01-12-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146(1), 397

Citation : (2001) 1 PLJR 563

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : Amarendra Nath Verma, for the Appellant; Abdul Mannan Khan and A.P. Sahay, for State, for the Respondent

Final Decision : Allowed

Judgement

I.P. Singh, J.—This revision petition is directed against the order dated 28.4.1998 passed by the 1st Additional District and Sessions Judge, Khagaria in Criminal Revision No. 132/97 by which he was pleased to allow the Petition setting aside a proceeding u/s 145 of the Code of Criminal Procedure (in short "the Code") initiated as also the order of attachment of the disputed land u/s 146(1) of the Code by the learned Sub-Divisional Magistrate, Khagaria.

2. The case of the Petitioner is that his grand-father late Mangal Sah purchased the land in dispute from one Md. Siddiquee and Md. Bashir on 30.10.1944 and since then his ancestors have been coming in peaceful possession as the land-owner.

3. The opposite party has also appeared and filed reply. Their case was that they are purchasers from one Bibi Quaisar Khatoon in the year 1995 and had been coming in peaceful possession over the disputed land.

4. On 2.8.1997 the learned Sub Divisional Magistrate, Gogh found emergent land (sic--law?) and order situation between the two parties and was pleased to attach to attach the land in dispute appointing Anchal Adhikari as receiver as per

the provision of Section 146(1) of the Code. He found that there was likelihood of breach of peace between the two parties at the time of order of attachment and also ordered both the parties to file their respective written statements by 12.8.1997.

5. Thereafter the opposite party preferred revision against the order of attachment u/s 146(1) of the Code before the learned 1st Additional District and Sessions Judge u/s 397 of the Code. The learned court below allowed the revision setting aside the order of attachment even though the order of attachment being an interlocutory and temporary order was not interfered with in revision u/s 397 of the Code. The order in revision was passed mainly on the ground that the area of the land in dispute was doubtful, since this Petitioner claimed it to be one Bigha whereas the opposite party claimed it to be 15 Kathas only.

6. Learned Counsel appearing on behalf of the Petitioner has submitted that the impugned order passed by the learned Sessions Judge is not in accordance with law. Learned Counsel for the opposite party has submitted that the identity of the disputed land is vague and not clear. According to him the disputed land is 15 Kathas and according to the Petitioner the disputed land is 1 Bigha.

7. It appears from the record that even the learned Executive Magistrate was of the opinion for appointment of Amin for the measurement of the land to establish the identity but the learned Magistrate has passed the order without getting it identify (sic--ied?) as such no proper identification of disputed land has been established.

8. In view of above the impugned order dated 28.4.1998 is set aside and the case is remitted back before the learned Magistrate first to decide the identity of the disputed land and there-after decide the possession of the either party afresh in accordance with law.

9. Accordingly this revision petition is allowed.