
(2006) 01 PAT CK 0074

In the Patna High Court

Case No : Criminal Miscellaneous No. 21830 of 2002

Usha Chand and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 06-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144, 145, 482

Citation : (2006) 2 PLJR 185

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Advocate : Subhro Sanyal, for the Appellant; S. Azeem for the State, M/s Kamal Nayan Choubey and Ambuj Nayan Choubey for Opposite Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

Rekha Kumari, J.—The case has been placed before the Court today under the heading "To Be Mentioned". Learned counsel for both sides are present.

2. An order in this case was passed on 25.11.2005. The order was dictated in open Court. Before signing the order, it was detected that in the operative portion (last paragraph) inadvertently "I find no merit in the quashing application and the same is hereby dismissed" were written in place of "I find merit in the quashing application and the same is allowed". Accordingly, the order is herewith passed after correcting the mistake," however, the unsigned order would remain on record with my initial in the margin.

3. This is an application filed u/s 482 of the Code of Criminal Procedure for quashing the order dated 22.4.2002 passed by the S.D.M. Sadar, Patna in Case No. 121 (M) of 2002 converting the proceeding u/s 144 Cr.P.C. into u/s 145 Cr.P.C.

4. Learned counsel for the petitioners submitted that as the title partition suit has been decided by a competent Civil Court in which the donor of Opposite

Party No. 2 Shanti Devi was a party, the proceeding u/s 145 Cr.P.C. regarding the same property would be an abuse of the process of Court and should be quashed.

5. Learned counsel for Opposite Party No. 2, on the other hand, submitted that though Shanti Devi, who had executed deed of gift in respect of the disputed property to Opposite Party No. 2, was a party to the title suit, the decree was obtained by playing fraud on her and that though a title suit has been decided there is no bar for initiating a proceeding u/s 145 Cr. P.C. if there is still apprehension of breach of the peace.

6. It appears from the impugned order that Opposite Party No. 2 was claiming the property in dispute through a deed of gift executed by one Shanti Devi. It also appears that a title partition Suit No. 330 of 1999 was filed with respect to same properties inclusive of the disputed property in which Shanti Devi was a party and a preliminary decree has already been passed by the Subordinate Judge, Purnia on 24.2.2001 in which the said donor of the petitioners, namely, Shanti Devi has not been given any share in the said property on the basis of her petition filed therein that she does not claim any part in the said property. Therefore,, it is clear that Shanti Devi has no share in the disputed property according to the preliminary decree passed in the title partition suit.

7. When the court of competent jurisdiction has already decided the title and possession of Shanti Devi, in a civil suit over the property, which is the subject matter of the present proceeding, initiating of proceeding u/s 145 Cr.P.C. shall be an abuse of the process of Court. Therefore, if at all any apprehension of breach of peace is apprehended, it was just and proper for the learned Sub-divisional Magistrate to take appropriate steps u/s 107 Cr.P.C. I find merit in this quashing application and the same is hereby allowed with the above observation.