

(1997) 02 PAT CK 0012

In the Patna High Court

Case No : Criminal W.J.C. No. 763 of 1996

Uttam Lal Yadav and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 05-02-1997

Acts Referred:

Bihar Tenancy Act, 1885 — Section 106
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 482

Citation : (1997) 1 PLJR 470

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Vinod Shankar Modi, for the Appellant; M.P. Bharti, Ranjan Kumar Singh and Ravindra Prasad Singh, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the Petitioners have prayed for issuance of appropriate writ in the nature of certiorari for quashing the order dated 27.9.1996 passed by 1st Additional District Judge, Madhipura in Criminal Revision No. 64 of 1996 and the order dated 6.6.1996 passed by the Sub-divisional Magistrate, Madhipura in Miscellaneous Case No. 244 of 1996. Learned Sub-divisional Magistrate by the aforesaid order initiated a proceeding u/s 145 of the Code of Criminal Procedure by ignoring the final order passed by him in the earlier proceeding for the same dispute between the same parties.

2. The fact of the case lies in a very narrow compass.

3. The land in dispute comprised within the plot No. 1283 (old plot No. 1058) measuring an area of 44 decimal of village-Sakhua, Police-Station-Murliganj, District-Madhipura. The land in dispute was recorded in the name of State of Bihar which has been settled to Sri Shardanand Singh in whose name zamabandi No. 19 was fixed in the record of the Government and he has been paying rent and getting rent receipt. The Petitioners claiming to be landless people

approached the said Shardanand Singh for sale of the land for the purpose of construction of their residential houses. The Petitioners paid the consideration amount to the said land owner and came in possession of the disputed land and constructed their residential houses and are living peacefully in their respective houses. The Petitioners' further case was that sale deed of the land in dispute was executed by Sri Shardanand Singh in favour of the wife of Petitioner Nos. 1 and 2 on 26.3.1996 and has been duly registered. The Petitioners' further case was that on 30.3.1996 the Respondent No. 2 informed the Officer-in-Charge, Murliganj stating that there was apprehension of breach of peace between him and the Petitioners over the land in dispute. Consequent thereupon on the basis of the police report the Sub-divisional Magistrate, Madhipura initiated a proceeding u/s 144 of the Code of Criminal Procedure both against the Petitioners and Respondent No. 2 and they were asked to file their show-cause. The Petitioners and Respondent No. 2 filed their respective show cause and also filed their documents in support of their claim of right, title and possession. In the show cause filed by the Petitioners they have stated in detail the aforementioned facts about the purchase of land from Sri Shardanand Singh and construction of residential houses. In the show cause filed by Respondent No. 2 it was stated that the disputed land originally belonged to one Raghunath Singh from whom his father, purchased in the name of Pancham Narayan Singh on 4.1.1957. Pancham Narayan Singh ultimately executed the wazidaba deed on 24.11.1976 in favour of his father. Again on 13.3.1996 the sons of Pancham Narayan Singh executed wazidaba in favour of Respondent No. 2. The Respondent No. 2 further stated that Zamabandi was running in the name of Pancham Narayan Singh and he also filed a case u/s 106 of the Bihar Tenancy Act as in the recent survey Khata was not prepared in his name. Further learned Sub-divisional Magistrate after hearing both the parties and after considering all the documents came to the conclusion that the documents filed by the Petitioners fully supported their claim of (sic) and possession over the disputed and, Learned Sub-divisional Magistrate, accordingly, passed an order on 24.5.1996 declaring the peaceful possession of the Petitioners and vacated the order against them. It was also observed in the said order that Respondent No. 2 may move to civil court for ventilating his claim, a copy of the said order is Annexure 3 to the writ application. It is further stated that Respondent No. 2 did not challenge the aforesaid final order dated 24.5.1996 by filing an appeal or revision. The Respondent No. 2, however, again filed a Miscellaneous Case No. 244 of 1996 before the learned Sub-divisional Magistrate, Madhipura on 6.6.1996 stating therein the same facts against these Petitioners of the same dispute over the land. Learned Sub-divisional Magistrate who decided the case just before 12 days back entertained the application and passed an order on 6.6.1996 for initiation of proceeding u/s 145 of the Code of Criminal Procedure and issued notice calling upon the Petitioners to file their written statement. The Petitioners, therefore, challenged the aforesaid order by filing revision application before the District Judge, Madhipura being-Criminal Revision No. 64 of 1996 and the learned 1st Additional District and Sessions Judge, Madhipura after hearing the parties

dismissed the revision in terms of an order dated 27.9.1996.

4. A counter affidavit has been filed on behalf of Respondent No. 2 stating, inter alia, that the earlier order passed by the Sub-divisional Magistrate u/s 144 of the Code of Criminal Procedure was without hearing Respondent No. 2 and without considering the facts and the documents filed on his behalf. Respondent No. 2 further stated that the earlier order dated 24.5.1996 passed by the learned Sub-divisional Magistrate was not in accordance with law and the force of the final order was only for 60 day from the date of initiation of the proceeding u/s 144 of the Code of Criminal Procedure. Respondent No. 2 further claimed title and possession over the land by stating series of facts.

5. I have heard Mr. Vinod Shankar Modi, learned Counsel appearing on behalf of the Petitioners and; Mr. M.P. Bharti, learned Counsel appearing on behalf of the Respondent No. 2.

6. Learned Counsel for the Petitioners firstly submitted that when the proceeding u/s 144 of the Code of Criminal Procedure was heard and finally decided by the Sub-divisional Magistrate, Madhipura, a second proceeding just after few days in respect of the same land was wholly illegal and without jurisdiction. Learned Counsel further submitted that impugned order passed by the learned Magistrate is vitiated in law and will amount to miscarriage of justice.

7. On the other hand, learned Counsel for Respondent No. 2, firstly, submitted that the instant writ application is not maintainable inasmuch as original order passed by the Sub-divisional Magistrate was affirmed by the learned Additional Sessions Judge exercising power u/s 482 of the Code of Criminal Procedure. Learned Counsel submitted that a writ application is barred after availing the revision u/s 482 of the Code of Criminal Procedure.

8. The first question raised by the learned Counsel for the Respondent about the maintainability of the writ application is no longer res integra. In the case of Surendra Singh and Others Vs. The State of Bihar and Others, , a Special Bench of this Court was considering a similar fact and it was held that although a second revision is not maintainable but application under Article 227 of the Constitution is maintainable as any statutory bar under the Criminal Procedure Code cannot affect the power of the superintendence of the High Court. The power of superintendence is to be exercised most sparingly and only in appropriate cases, in order to keep the subordinate courts within the bounds of their authority so that there should not be any miscarriage of justice.

9. Coming back to the instant case it appears from the perusal of the earlier order passed by the Sub-divisional Magistrate (Annexure 3) that in the earlier proceeding both the Petitioners and Respondent No. 2 filed their respective show causes and all the relevant documents were filed. Learned Magistrate after considering all the facts and the evidence came to a finding that all the documents filed by Respondent No. 2 do not relate to the disputed land rather Petitioners' title and possession was proved on the basis of the documents filed

by them. Learned Magistrate after having satisfied with the case of the Petitioners with regard to title and possession passed final order and restrained Respondent No. 2 from interfering with the Petitioners' possession. Learned Magistrate further observed that the Respondent No. 2 may ventilate his claim before the competent civil court. In view of the said order there was no occasion for the Sub-divisional Magistrate to initiate a fresh proceeding just after 12 days in respect of the same land and between the same parties. From the impugned order dated 6.6.1996 passed by the Sub-divisional Magistrate, it appears that the said order was passed without the application of mind and without considering the earlier order passed by him. The Additional District Judge, Madhipura has failed to consider the case of the Petitioners in its right perspective. Learned revisional court dismissed the revision application without deciding question raised by the Petitioners and therefore, the said order cannot be sustained in law.

10. Having regard to the facts of the case I am of the view that the impugned orders passed by the Sub-divisional Magistrate and the 1st Additional Sessions Judge, Madhipura are not in accordance with law and are liable to be quashed.

11. In the result this application is allowed and the impugned orders are hereby quashed. The Respondent No. 2, however, is at liberty to move to civil court for adjudication of the right, title and possession about the disputed land.