

(2008) 02 PAT CK 0111

In the Patna High Court

Case No : Criminal Miscellaneous No. 25380 of 2007

Vijaya Lakshmi and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144
Penal Code, 1860 (IPC) — Section 465, 471

Citation : (2008) 56 BLJR 1704

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Ajay Kumar Thakur and Bimal Kumar, for the Appellant; Jharkhandi Upadhyay, Assistant Public Prosecutor and Poonam Kumari, for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The three petitioners who along with others have been made to figure as accused in Complaint Case No. 2022 of 2006 have prayed for the quashing of order dated 24.4.2007 passed therein by Sri Sahgir Alam, Judicial Magistrate, First Class, Siwan, whereby cognizance has been taken for offences under

2. Ramchandra Prasad, the complainant, impleaded as O.P. No. 2 herein, filed the aforesaid complaint stating that 10 Kathas, 15 Dhors of Dih Basgeet land appertaining to Khata No. 614, Plot No. 4246 was jointly recorded in the name of Lal Bahadur Lal Rudar, Ragunath Lal, Sheonath Lal and Dwarika Sahay and that Dwarik Sahay died leaving behind two sons Raghunath Lal and Sheonath Lal and Lal Bahadur Lal Rudar during his life time used to live with the sons of his brother, Raghunath Lal and died issueless whereafter the entire property was managed by Raghunath Lal and Sheonath Lal. It is said that in the family partition the aforesaid land fell in the share of Sheonath Lal over which he constructed a house and Bathan and on the remaining portion grew vegetables

etc.

3. It is alleged that on 19.11.2006 he got information from one Ajay Rai that the accused persons were trying to capture the lands aforesaid by forging documents whereupon he went to Basantpur Sub Registry Office and obtained a sale deed dated 10.10.2006 which revealed that, the petitioner No. 1 had executed a forged sale deed in respect of the lands of the complainant aforesaid in favour of petitioner Nos. 2 and 3. The police refused to register a case, hence, the complaint.

4. It has been submitted on behalf of the petitioners that they are innocent and have been falsely implicated in the present case. It has further been submitted that allegation of cheating could not have been levelled by the complainant since it is the accused Nos. 2 and 3 who having purchased the lands could have made such allegation of cheating as they had been made to purchase the lands which did not belong to the executant of the sale deed. It was further submitted that when the sale deed was executed by Vijaya Lakshmi as such there was no question of any impersonation on the part of the petitioner No. 1 and allegation of fraud could also not be levelled against her.

5. The learned Counsel for the petitioner further sought to submit that it is well settled principles of law that a vendor can not transfer any title or possession of property which he or she was not possessing. In this contest, it was submitted that even if the complainant claimed the aforesaid lands as falling to his lot in the family partition he in no way is effected by the execution of sale deed by petitioner No. 1 as she could not have transferred more than her title and possession.

6. It was further submitted that it would be apparent from the recital in the sale deed that accused No. 1 had inherited the said property by virtue of a decree passed in Title Suit No. 230 of 1936 as she happens to be a descendent of Mahavir Sharan Prasad Singh. The said decree was prepared on 24.3.1943 and Schedule-G of the said decree is with regard to the land of Mahavir Sharan Prasad Singh which reveals that 10 Kathas, 15 Dhors land of Khata No. 614, Plot No. 4246 was allotted in the share of Mahavir Sharan Prasad Singh, the father of petitioner No. 1 and that by virtue of final decree delivery of possession was effected to all co-sharers.

7. The learned Counsel further sought to submit that in respect of the lands in question a proceeding u/s 144 Cr.P.C. was initiated by the learned Sub Divisional Magistrate in between the husband of petitioner No. 1 and the present complainant and as the complainant failed to comply with the directions of the court to file documents in his favour the rule was vacated vide order dated 22.11.1985 against Ist party and it was made absolute against the second party, i.e., the complainant and others. In this connection, it was sought to be submitted that the present complainant had claimed those lands before the Revenue Authority which he lost at all stages and finally in C.W.J.C. No. 9775 of

1992, he lost the case before the Hon"ble Court when the said writ petition filed by him was dismissed on 31.1.1995.

8. It was further sought to be submitted that taking into account the submissions made above, no offence either u/s 465 or 471 I.P.C. can be said to have been made out in the complaint petition. It was also submitted that the provisions of Section 471 I.P.C. makes it an offence when a forged documents is used as a genuine documents but in this case the sale deed executed by the petitioner No. 1 was a genuine document executed by a genuine persons and the prosecution of the petitioner would be an abuse of the process of the court.

9. The learned Counsel appearing on behalf of O.P. No. 2 was not in a position to rebut the submissions advanced by the learned Counsel for the petitioners and merely stated that the lands in question belong to the complainant vide family partition and the very fact that the lands were sought to be sold by the accused No. 1 amounted to fraud and cheating.

10. The submissions advanced by the learned Counsel for the petitioners clearly indicates that no offence under the Penal Code is made out and it is a clear case of civil dispute. Except for the allegation of the complainant of the alleged sale deed having been created by the practice of fraud, there is no finding of any of court of competent jurisdiction to declare that the said sale deed was the outcome of fraud. There is also a complete absence of the ingredients of Section 471 because it has not been proved that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document. To bring home Section 471 I.P.C. used or forged document as genuine, inter alia, must be made fraudulently and dishonestly. While deceit is an important ingredient of the definition of the word "fraudulently" it is not ingredient of the definition of the word "dishonestly" which involves a pecuniary or economic gain or loss.

It appears that both the parties have led claim on the property in dispute, the complainant by way of partition and the accused No. 1 by way of decree of Civil Court.

11. Therefore, the entire dispute revolves around the landed property and claim thereupon. Such claim can be resolved only by way of a civil action in a competent court of civil jurisdiction and no criminal prosecution therefore is maintainable.

12. Due regard being had to the facts and the circumstances of the case, the impugned order taking cognizance appears to be an abuse of the process of the court. If the claim of the petitioners was that the alleged sale deed was prepared fraudulently, he ought to have taken step for cancellation thereof which he has not done till today.

12. In the result, the application succeeds and the impugned order taking cognizance is hereby quashed.