RAVI RAMAN PRASAD AND ANR. A

v.

STATE OF BIHAR AND OTHERS

FEBRUARY 2, 1993

[LALIT MOHAN SHARMA, CJ., K. RAMASWAMY AND N. VENKATACHALA, JJ.] B

Code of Criminal Procedure, 1976 :

Sections 144, 145, 482—Property restored to owner—Tenant restrained from entering the property—Fresh application by tenant rejected—Order becoming final—On application by tenant High Court directing Police to take possession till disposal of Title Suit filed by him—Validity of. C

Respondent No. 4 was a tenant in a residential house owned by the appellants. He claimed that there was an agreement for sale of the property to him and in part performance thereof he continued in possession of the house and therefore he could not be evicted. An eviction suit filed by the appellants against Respondent No. 4 was decreed. In execution of the decree, the appellants were put in physical possession of the house with the aid of police force. Thereafter in a bid to take over possession of the said house, Respondent No. 4 opened fire and the appellants lodged FIR with the police. Proceedings under section 144 of the Code of Criminal Procedure was drawn up by the Sub-Divisional Magistrate. The proceedings ended in favour of the appellants, and Respondent No. 4 was restrained from entering upon the property. The Criminal Revision Petition preferred by Respondent No. 4 was dismissed by the High Court. D E F

Later, Respondent No. 4 again filed an application before the S.D.M. for initiating proceedings under section 145 Cr. P.C. and the same was dismissed. Since this order was not challenged, it became final.

Thereafter Respondent No. 4 filed a Title Suit. He also filed an application under section 482 Cr.P.C. before the High Court claiming the same relief as was claimed before the S.D.M. The High Court in its judgment directed that the possession of the house shall be with the police till the disposal of the suit. The appellant's application for recalling the judgment was rejected by the High Court. Being aggrieved by the said G H

A **judgment , the appellants preferred the present appeals.**

Allowing the appeals, this Court,

HELD : 1. The High Court failed to appreciate the crucial fact that the appellants were not put in possession of the property by the Sub-
B **Divisional Magistrate on the termination of the proceeding under Section 144 Cr.P.C. but had obtained actual physical possession thereof earlier in the execution of the eviction decree with police aid and the status quo was restored by the Sub-Divisional Magistrate while disposing of the proceeding under section 144 Cr.P.C. and dismissing the application of respondent**
C **No. 4 for starting a fresh proceeding under section 145 Cr.P.C. On the finding arrived at by him, the Sub-Divisional Magistrate took the right step in restoring the possession of the property to the appellants, who had been for a temporary period restrained from entering upon the same. The application made by respondent No.4 under section 482 Cr.P.C. was thus a gross abuse of the process of the Court. [396D-F]**
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2. By virtue of an interim order of this Court the appellants have remained in possession of the house and they shall continue to do so until respondent No.4 obtains a decree in his favour in the pending suit and dispossesses the appellants in accordance with law. [396G]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 213-214 of 1993.

From the Judgment and Order dated 11.10.91 and 3.9.91 of Patna, High Court in Crl. Misc. Jurisdiction Case No. 3064/91 (R) & Crl. Misc.
F No. 1263 of 1991.

S.N. Sinha for the Appellants

B.B. Singh and Ms. P. Khata (for Ms. Rani Jethmalani) for the Respondents.

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The Judgment of the Court was delivered by

SHARMA, CJ. Heard the learned counsel for the parties. Special leave is granted.

H 2. The dispute in the case relates to a residential house which

admittedly belongs to the family of the appellants and was in possession of respondent No. 4 as a tenant. The appellants and their father filed a suit for eviction impleading respondent No. 4 as a party, which was decreed. In execution of the decree the appellants were put in physical possession of the house with the aid of police force. The case of respondent No.4 is that there was an agreement for sale of the property to him and in part performance thereof he continued in possession of the house and was, therefore, not liable to be evicted. He has filed Title Suit No.27 of 1991 in the Court of Munsif, Hazaribagh, on the basis of the alleged agreement which is still pending. He continued to assert his possession of the house and was not reconciled even after his dispossession with the aid of the police force, and ultimately an incident took place on 15.9.1991 which is the subject matter of a pending criminal case. According to the appellants respondent No. 4 opened fire in a bid to take over possession of the house and a first information report was lodged with the police.

3. At this stage a proceeding under Section 144 of the Code of Criminal Procedure was drawn up by the Sub-Divisional Magistrate and both the parties were restrained from entering upon the property. After the matter was examined, the Sub-Divisional Magistrate decided the proceeding on 11.10.1990 in favour of the appellants. Relying upon the fact of delivery of possession of the property to the appellants in pursuance of the Civil Court's decree and the other materials on the record, the Sub-Divisional Magistrate restrained the respondent No. 4 from entering upon the property. Some further facts have been stated by the appellants in their special leave petition in this regard, which do not appear to be relevant at the present stage, and it is sufficient to mention that a criminal revision petition by respondent No. 4 directed against the Sub-Divisional Magistrate's Order was dismissed by the High Court. On 22.1.1991, that is, more than three months after the Sub-Divisional Magistrate's Order, respondent No. 4 filed a fresh application before the same Sub-Divisional Magistrate for initiating a proceeding under Section 145 Code of Criminal Procedure, which was dismissed by a reasoned order, pointing out the existence of eviction decree against the respondent No. 4 and the fact of delivery of possession of the property to the appellants in execution thereof. This order was not challenged and became final. It was only thereafter that the Title Suit by respondent No. 4 was filed in Munsif's Court. On 23.4.1991, respondent No. 4 made an application under Section 482 Code of Criminal Procedure before the High Court substantially for the same relief which was claimed before the Sub-Divisional Magistrate. He did not

A set out complete facts in his application, High Court mainly relied upon the fact of delivery of the movable articles found in the property by the authority concerned to the parties in pursuance of the final direction issued in the proceeding under Section 144 of the Code of Criminal Procedure and prayed for dispossession of the appellants from the house. The appellants appeared before the High Court and placed full facts, but the High B Court by the impugned judgment directed that the house shall be in possession of the Officer-in-charge of the Mandu Police Station till the disposal of the Title Suit. The appellants moved an application before the High Court for recalling its judgment, which was heard by the Division Bench and was dismissed.

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4. According to the impugned order of the High Court, when on the initiation of the proceeding under Section 144 of the Code of Criminal Procedure both the parties had been restrained from entering upon the property, it was not right for the Sub-Divisional Magistrate to have allowed the appellants later to take possession of the property. An examination of D the impugned judgment will show that the High Court failed to appreciate the crucial fact that the appellants were not put in possession of the property by Sub-Divisional Magistrate on the termination of the proceeding under Section 144 Code of Criminal Procedure, but had obtained actual physical possession thereof earlier in the execution of the eviction decree with police aid and the status quo was restored by the Sub-Divisional E Magistrate while disposing of the proceeding under Section 144 of the Code of Criminal Procedure and dismissing the application of the respondent No. 4 for starting a fresh proceeding under Section 145 of the Code of Criminal Procedure. On the finding arrived at by him, the Sub-Divisional Magistrate took the right step in restoring the possession of the property F to the appellants, who had been for a temporary period restrained from entering upon the same. The application made by respondent No. 4 under Section 482 of the Code of the Criminal Procedure was thus a gross abuse of the process of the court, which the High Court failed to appreciate. We, accordingly allow the appeal, set aside the impugned judgment and dismiss the application of respondent No. 4 made before the High Court. By virtue G of an interim order of this Court the appellants have remained in possession of the house and they shall continue to do so until respondent No. 4 obtains a decree in his favour in the pending suit and dispossesses the appellants in accordance with law.

G.N. Appeals allowed.