

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43597 of 2015

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Smt. Usha Sinha, Wife of Late Sunil Kumar, Resident of Village- Ishua, Police Station- Sarmera, District- Nalanda, at present A/401, Dev Kutir, Apartment, Jagat Narayan Road, Kadam Kuan, Police Station- Kadam Kuan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Satish Prasad Singh
3. Dev Narayan Prasad Singh
4. Subodh Kumar Singh, All Sons of Sri Sona Lal Singh, Resident of Village- Auta, Police Station- Hathidah, District- Patna.
5. Smt. Laxmi Dharam, Wife of Sri Vijay Sharma and Daughter of Late Ramchandra Singh, Resident of Village- Auta, Police Station- Hathidah, District- Patna.
6. Saroj Devi, Wife of Late Ram Bhushan Prasad Singh null
7. Vishwajeet Singh
8. Indrajeet Singh, Both Sons of Late Ram Bhushan Prasad Singh
9. Smt. Vandana, Wife of Vishwajeet Singh
10. Smt. Deep Mala, Wife of Indrajeet Singh All Resident of Road No. 3, East Indra Nagar, Kankarbagh, Police Station- Kankarbagh, District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Diwakar Upadhyaya
For the Opposite Party/s : Mr. J.Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

12 10-09-2024

1. The instant Miscellaneous Case arises out of an application under Section 482 of the Code of Criminal Procedure, filed by the petitioner, praying for quashing of an order dated 16th of July, 2015, passed by the learned Additional Sessions Judge, VI Court at Patna, in Cr. Revision No. 32 of 2015, whereby and whereunder, the learned Judge dismissed the



Revision filed by the petitioner against the order, dated 2nd of December, 2014, passed by the Executive Magistrate, Patna Sadar in Case No. 520 (M) of 2013 under Section 145 of Cr.P.C.

2. The dispute between the parties relates to Plot No. 1200, measuring 5 Katha, 6 Dhur of area out of 96 decimal of land, which has been acquired by the petitioner from one Pramod Kumar Sinha by virtue of two registered deeds of sale, dated 12th of October, 2006 and 19th of October, 2006, executed by the Power of Attorney holder of the said Pramod Kumar Sinha, namely, Manvendra Singh. The said land was parted and bounded on the north by New Bypass Road, on the south by Paine, in the east by 15 ft. public road Doma Gope / Ford Hospital and on the west by the land owned by Keshwar Gope and others. The land in question is situated at Mauza-Jaganpura, Phulwari Sharif, Patna.

3. It is stated by the petitioner that the land in question originally belonged to one Babu Jodhan Prasad Singh and subsequently by successive transfer, the said land was owned by the vendor of the petitioner.

4. The case of the petitioner is that for land of Tauzi No. 131 of Mauza – Jaganpura, Babu Shiv Narayan Chaudhary and Jodhan Prasad filed a Rent Suit No. 11 of 1910 and



thereafter in Executive Case No. 1015 of 1913, whole Tauzi including Plot No. 1200, measuring 96 decimals came into their possession. The petitioner has narrated the entire story of devolution of interest in the said property by his vendor, Pramod Kumar Sinha. Further case of the petitioner is that the Respondents on the basis of fake and forged document tried to disturbed the peaceful possession of the petitioner over the said land and as such she was constrained to file a Land Dispute Case No. 27 of 2013-14 in the Court of DCLR, Patna Sadar under the provisions of Bihar Land Dispute Resolution Act, 2009. In the said proceeding, the Respondents appeared before the DCLR in pursuance of notice and filed written statement therein. After hearing the parties, the DCLR held that the petitioners have title and possession over the land by its order dated 5th of October, 2013. An order of declaration of title and possession of the petitioner was also passed by the DCLR. It was further directed that the petitioner has been forcibly and illegally dispossessed and she may be given possession of the land in question. On the basis of police report, given in Case No. 20 of 2013, dated 12th of April, 2013, the Sub-Divisional Magistrate, Sadar Patna, initiated a proceeding under Section 144 of the Cr.P.C. and thereafter *vide* order dated 13th of June,



2013, the Executive Magistrate converted the said proceeding to a proceeding under Section 145 of the Code of Criminal Procedure. In the said proceeding under Section 145 of the Cr.P.C., the petitioner was the first party and Opposite Party Nos. 2 to 10 were the second party. The Executive Magistrate, Patna Sadar *vide* order, dated 2nd of December, 2014, passed the final order declaring the possession of the Respondents over the disputed land. Against the said order, the petitioner filed Cr. Revision before the learned Sessions Judge, Patna bearing Cr. Revisional No. 32 of 2015. The said Revision was subsequently transferred to the Additional Sessions Judge – VI Court at Patna for hearing and disposal. The petitioner was informed by the Court of the learned Additional Sessions – VI, Patna that the date of hearing of the Revision would be fixed on 21st of July, 2015. However, on that date, the petitioner came to know that the Revision Application was finally disposed of by the learned Court of Revision *vide* order dated 16th of July, 2015.

5. It is contended by the petitioner that when the petitioner's ownership and possession was decided and declared by the DCLR under the Bihar Land Dispute Resolution Act, the said order is binding upon the learned Executive Magistrate. The learned Executive Magistrate as well as the Revisional



Court did not consider the said fact and the impugned orders are liable to be quashed and set aside.

6. By filing a supplementary affidavit, dated 3rd of February, 2016, it is contended by the petitioner on the basis of information received under Right to Information Act, that the Cr. Revision No. 32 of 2015 was disposed of by the learned Additional Sessions Judge – VI, without giving any opportunity to the petitioner of hearing.

7. Again, on 6th of August, 2024, the petitioner filed 3rd supplementary affidavit, stating, *inter alia*, that after purchase of the land in question, the husband of the petitioner Sunil Kumar (HUF), mutated his name in respect of the said land and has been paying malguzari to the Government of Bihar. The HUF of Sunil Kumar was a partner in M/s Satyendra Kumar & Company and the said land was mortgaged to Indian Overseas Bank on 3rd of November, 2006 till 24th of July, 2015. The Executive Magistrate passed order dated 26th of April, 2014 in the absence of the petitioner and the case was posted for evidence of the 1st party. On 30th of August, 2014, the case was posted for ex parte hearing against the petitioner.

8. The learned Advocate on behalf of the petitioner, who are entrusted to look after the case, did not take any action



and accordingly the case was fixed for evidence of the second party on 22nd of November, 2014 and final order has been passed on 2nd of December, 2014.

9. It is alleged that there was over-writing on the dates fixed for hearing of the proceeding under Section 145 of the Cr.P.C.

10. Be that as it may, the petitioner and her son have filed Title Suit No. 41 of 2018 in the Court of the learned Sub-Judge-I, Patna for declaration of title and permanent injunction, restraining the defendants / second party from interfering with the possession of the petitioner. The said suit is still pending before the learned Sessions Judge, XIV Court, Patna, for consideration of the petition under Order 39, Rules 1 and 2 of the CPC, filed by the petitioner.

11. The Opposite Party No. 9 has been contesting the instant proceeding.

12. It is submitted by the learned Advocate appearing for the Opposite Parties that their predecessors had right, title and possession over the property by purchase through registered sale-deed and got mutation done in their favour and they have been continuously in possession for last 30 years. The Opposite Party No. 9 has been running a shop/showroom and a godown



over the said land, making huge investment. In order to unsettle the opposite parties, the petitioner filed a case in the Court of the DCLR, and, thereafter, she herself filed an application before the Executive Magistrate on the basis of which proceeding under Section 144 of the Cr.P.C. was initiated and the said proceeding was converted under Section 145 of the Cr.P.C. During the hearing of the application under Section 145 of the Cr.P.C., the petitioner could not produce any evidence in support of her claim. On the other hand, on the basis of the evidence adduced by the opposite parties and the documents, the Executive Magistrate held that the opposite parties are in possession of the land in question. The said order was challenged in Revision, but the Revisional Application was also dismissed.

13. The learned Advocate on behalf of the Opposite Parties submits that the instant Criminal Miscellaneous Case under Section 482 of the Cr.P.C. is not maintainable under the prevailing facts and circumstances.

14. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in *Madhu Limaye v. State of Maharashtra*, reported in (1977) 4 SCC 551. In the said decision, it is observed by the Hon'ble Supreme Court that



inherent power of the Court is to be exercised very sparingly and when there is a specific provision in the Cr.P.C. to redress the grievance, inherent power cannot be exercised.

15. In *Arun Shankar Shukla v. State of U.P. & Ors.*, reported in (1999) 6 SCC 146, it is held by the Hon'ble Supreme Court that Section 482 of the Cr.P.C. does not give unfettered authority to the Court to review any order passed by the Subordinate Court of Criminal Jurisdiction. The said provision only applies in cases where there is abuse of the process of the law or to secure ends of justice. This is an extraordinary power to be used sparingly for achieving the object mentioned in the said Section.

16. It is also submitted by the learned Advocate on behalf of the Opposite Parties that the petitioner has challenged the order of Revisional Court passed in Cr. Revision No. 32 of 2015. Section 397 (3) clearly provides that if a Revisional Application has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entitled by either of the aforesaid two Courts.

17. In support of his contention, he refers to the decision of the Hon'ble Supreme Court in *Krishnan & Anr. v.*



Krishnaveni & Anr., reported in ***(1997) 4 SCC 241*** and ***Rajan Kumar Machananda v. State of Karnataka***, reported in ***1990 Supp (1) SCC 132***.

18. It is further urged by the learned Advocate for the Opposite Parties that a Title Suit, bearing No. 41 of 2018, filed by the Petitioner and her son, is pending before the Court of the learned Sub-Judge XIV, Patna.

19. It is contended on behalf of the Opposite Parties that the question relating to possession of a particular land is a question of fact which can only be decided by the Civil Court. Since the Suit is pending, proper course of action of the petitioner is to file an application before the Civil Court of competent jurisdiction.

20. The learned Advocate on behalf of the Opposite Parties further submits that the life of an order under Section 145 of the Cr.P.C. is coterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displeases the order of the Criminal Court. The orders under Section 145 of the Code are thus merely police orders and do not decide the question.

21. In support of his contention, he refers to Section 145 (6) of the Cr.P.C., which runs hereunder:-



“If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.”

22. In support of his contention, he refers to a decision of the Hon’ble Supreme Court in ***Bhinka & Ors. v. Charan Singh***, reported in ***AIR 1959 SC 960***.

23. He also refers to another decision of the Gauhati High Court in ***Tarulata Devi v. Nikhil Bandhu Mishra***, reported in 1982 CRILJ 1665.

24. On the same point, learned Advocate for the Opposite Parties refers to several decisions. In my considered opinion, reference to those decisions will only be repetition of the same legal provisions decided by the Hon’ble Supreme mentioned hereinabove. Therefore, I refrain myself from referring those decisions.

25. It is needless to say that the object 145 of the Cr.P.C. is merely to maintain law and order and to prevent breach of peace by maintaining one or either of the parties in possession, which the Court finds they had immediately before



the dispute, until the actual right of the parties has been determined by the Civil Court.

26. Therefore, the Civil Court is the appropriate forum for declaration of ownership and recovery of possession of any property. The issue as to whether any person has the right to possess the property or not cannot be decided by the Criminal Court. The Criminal Court under Section 145 of the Cr.P.C. shall protect the existing possession, be it lawful or unlawful. In order to evict a person/persons from possession of a particular piece of land, decree of a Civil Court is required.

27. It is ascertained from the record that the petitioner did not appear to contest the case before the learned Executive Magistrate and the order under Section 145 of the Cr.P.C. was passed ex parte. The order in Criminal Revision No. 32 of 2015 was also passed ex parte.

28. The petitioner has not come up with a case that the impugned order suffer from abuse of the process of the Court or the impugned order is required to be set aside to secure ends of justice. Both the parties are claiming ownership over the property on the basis of certain documents, veracity of which can only be decided by the Civil Court.

29. Under the facts and circumstances of this case and



in view of the discussions made hereinabove, I do not find any ground to invoke the inherent power of this Court under Section 482 of the Cr.P.C.

30. The instant Criminal Miscellaneous Case is thus, dismissed, on contest.

(Bibek Chaudhuri, J)

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