

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9457 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- SARAN

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1. Dr. Purnendu Ojha S/O Late Ram Bilas Ojha R/O B-21, Patrakar Nagar, P.O.& P.S.Kankarbagh, Distt-Patna
 2. Dr. Namita Ojha W/O Dr. Purnendu Ojha R/O B-21, Patrakar Nagar, P.O.& P.S.Kankarbagh, Distt-Patna

.... Petitioner/s

Versus

1. Sanjay Ojha son of Late Dhrub Nath Ojha
2. Madhuri Ojha W/o Late Dhrub Nath Ojha R/O Village & PO- Kolhua, PS- Baniapur, District- Saran. At present 192/A/119, Lake Garden, PS- Lake Garden, District- 24 Pargana, Kolkata- 700045
3. Sanjay Ojha son of Late Dhrub Nath Ojha
4. Dheeraj Ojha son of Late Dhrub Nath Ojha All R/O Village and PO- Kolhua, PS- Baniapur, District- Saran. At present 192/A/119, Lake Garden, PS- Lake Garden, District- 24 Pargana, Kolkata- 700045
5. Dheeraj Ojha son of Late Dhrub Nath Ojha All R/O Village & PO- Kolhua, PS- Baniapur, District- Saran. At present 192/A/119, Lake Garden, PS- Lake Garden, District- 24 Pargana, Kolkata- 700045
6. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 09-02-2015

The petitioners seek quashing of the entire proceeding including the order of cognizance dated 20.12.2010 passed by the Judicial Magistrate, 1st Class, Chapra in Complaint Case No. 1638 of 2009, Trial No. 2471 of 2010.

The case of the complainant is that there was a family dispute over the property between the father of the complainant and the accused persons. The original complainant and the petitioner no. 1 are full brothers and it is alleged that one room had been given to him on the first floor of the house known as Ojha Niwas, Chapra in which number of articles were kept by the complainant but on

17.05.2009 the accused persons came in a car broke open the lock of the room and took away the articles from there. When he returned he learnt from the witnesses that this act has been committed by the accused persons.

It has been submitted on behalf of the petitioners that as conceded by the complainant, partition suit is going on between the parties in Chapra Civil Court bearing Partition Suit No. 223 of 1985. The same was dismissed but subsequently restored. Number of ancillary litigations have sparks up on account of property dispute and the present complaint is an example of one such litigation. Further submission is that the allegations made in the complaint appear farfetched and unreliable.

On the other hand counsel for substituted complainant submitted that since the accused persons had committed theft in his room, they should be put on trial even if he was not an eye witness to such theft.

In the facts of the case, I would be inclined to accept the submissions raised on behalf of the petitioners that the allegations appear unreliable in the background of partition suit. Hence the application is allowed. The order of cognizance dated 20.12.2010 passed by the Judicial Magistrate, 1st Class, Chapra in Complaint Case No. 1638 of 2009, Trial No. 2471 of 2010 is hereby set aside.

However, the quashment of proceeding shall have no bearing on any other proceedings pending between the parties.

(Anjana Prakash, J)

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