

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47874 of 2013

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

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1. Mukesh Paswan Son Of Ram Chandra Paswan Resident Of Village- Bahilwara Pand;Ey Tola, P.S.- Saraiya, District- Muzaffarpur

2. Ram Chandra Paswan Son Of Late Ramji Paswan Resident Of Village- Bahilwara Pandey Tola, P.S.- Saraiya, District- Muzaffarpur

.... Petitioners

Versus

1. The State Of Bihar

2. Baleshwar Pandey, son of late Bhadai Pandey, resident of village Bahilwara Pandey Tola, P.S. Saraiya, district Muzaffarpur

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Neeraj Kumar @ Sanidh, Adv.

For the State : Mr. Shyam Kumar Singh, APP 138

For OP No. 2 : Mr. Arun Kumar Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 09-01-2017

Heard the learned counsel for the petitioners, the State and the opposite party no 2.

2. This is a petition for quashing the order, dated 22nd April, 2013, passed in Complaint Case No. 852 of 2012 (Tr. No. 4403 of 2013), whereby the learned Court below has ordered for issuance of process under Section 204 of the Criminal Procedure Code against the petitioners to face trial for offence under Section 420 of the Indian Penal Code.

3. The complainant, opposite party no. 2, Baleshwar Pandey, had executed a registered sale deed on 04.05.2012 in favour of the petitioners whereby he sold away 10 decimals of plot no. 5619 in khata no. 953 situated in village Bahilwara Pandey Tola in the district of Muzaffarpur for a total consideration of Rs.1,60,000/-.

4. Allegation in the complaint petition is that in fact only 4½ decimals was to be sold and the petitioners by playing fraud and just to cheat the complainant get a registered sale deed of 10 decimals though the complainant had share of 9 decimals only.

5. Submission of the petitioners is that the complaint petition was just to pressurize the petitioners to give more money. Even if the allegation is assumed to be correct, no case of cheating is made out against the petitioners, because the petitioners had no role in the execution and registration of the sale deed. Only after some recent



amendments in the Registration Law only photographs and finger impression of purchaser is taken on the sale deed just to prevent the misuse of benami transaction. Entire recital of the sale deed is drafted on the dictate of the vendor who is identified by his witnesses and none of the identifier or witness on the sale deed is a witness in the complaint case. Further, contention is that no one can get a better title from the vendor than what the vendor had.

6. The learned counsel for the opposite party no. 2 does not controvert the aforesaid factual position.

7. There is no dispute regarding the execution of the sale deed or the identity of the land transferred. The only dispute is regarding the extent of area of land transferred. As per the Registration Law sale deeds are registered only after admission by the vendor before the Registrar regarding proper execution of the sale deed. There is presumption of performance of official act duly. Further, the aforesaid issue may be looked into in a civil proceeding.

8. Hence, I am of the view that the present criminal proceeding is abuse of the process of the Court. Accordingly, the impugned order is set aside and this application stands allowed.

(Birendra Kumar, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.01.2017
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