

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10226 of 2014

Arising Out of PS.Case No. -1161 Year- 2010 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Dhupnath Yadav, Son Of Late Anup Yadav
 2. Smt. Rina Kumari Singh, Wife Of Pralaydeo
 3. Pralaydeo, Son Of Dhupnath Yadav
 4. Smt. Nilam Devi, Wife Of Malay Kumar Deo
 5. Malay Kumar Deo, Son Of Dhupnath Yadav, All Resident Of Village-Selghar, P.S.- Rani Talab, District- Patna
 6. Ram Ratan Yadav S/O Sanicher Singh, Resident Of Village-Raghunathpur, P.S.- Rani Talav, Dist- Patna

.... Petitioners

Versus

1. The State Of Bihar
2. Ram Ekbal Yadav, Son Of Late Anup Yadav, Resident Of Village-Selghar, P.S.- Rani Talab, District- Patna

.... Opposite Parties

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with

Criminal Revision No.893 of 2013

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

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Dhupnath Yadav, S/O Late Anup Yadav, R/O Village-Selghar, P.S.-
Ranitalab, Dist-Patna

.... Petitioner

Versus

State Of Bihar

.... Respondent

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Appearance :

(In Cr.Misc. No.10226 of 2014)

For the Petitioner/s : Mr. Dharmendra Kumar

For the Opposite Party/s : Mr. Uma Nath Mishra(App)

(In CR. REV. No.893 of 2013)

For the Petitioner/s : Mr. Kumar Goutam

For the Respondent/s : Mr. Ram Anurag Singh (App)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

6 29-06-2017 This criminal miscellaneous application has been

filed for quashing the order dated 29.07.2013 passed in



Complaint Case No. 1161 (C) of 2010 by Sri Mahavir Prasad, the then learned Judicial Magistrate-1st Class, Patna whereby and whereunder took cognizance for the offences punishable under Sections 420, 467, 468, 120(B) of the Indian Penal Code against the petitioners whereas Cri. Revision No. 893 of 2013 has been filed for setting aside the order passed in Criminal Revision No. 232 of 2011 by the learned Additional District and Sessions Judge 1st, Danapur whereby and whereunder the aforesaid Revision has been allowed and the order dated 10.02.2011 passed by Sri Rajiv Nayan, the then learned Judicial Magistrate-1st, Danapur in Complaint Case No. 1161 (C) of 2010 was set aside.

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

Complaint case no. 1161(C) of 2010 was filed by Ram Ekbal Yadav against the petitioner alleging that Dhupnath Yadav, Deodhari Yadav and the complainant were three brothers among whom the khangi Bantwara took place in the year 1973, after the death of their father namely Anup Yadav and accordingly three brothers came into peaceful possession of their share. On 11.02.2010 the accused Dhupnath Yadav sold the land belonging to the complainant's share in Plot No. 30,



Khata No.66 area about 33 ½ decimals from the total area of 67 decimals to his daughter-in-law namely Rina Kumari Singh and Nilam Devi in collusion with his sons. The aforesaid sale deed was executed with an intention to grab the share of the complainant and when the complainant requested them for cancellation of sale deed, the accused persons denied for this. The aforesaid complaint case was enquired into and during course of inquiry four witnesses have been examined and the complainant was also examined on solemn affirmation. The learned Magistrate after considering the statement on oath of the complainant and his witnesses dismissed the aforesaid complaint case by order dated 10.02.2011. Against the said order Criminal Revision No. 232 of 211 was filed which was heard by the learned Additional Sessions Judge-1st Danapur vide order dated 25.06.2012, the order dated 10.02.2011 passed by the learned Magistrate was set aside and thereafter the impugned order taking cognizance has been passed. Against the order dated 25.06.2012 passed by the learned Additional Sessions Judge, Danapur, Criminal Revision No. 893 of 2013 has been filed before this court and against the impugned order taking cognizance criminal miscellaneous has been filed.

On behalf of the petitioners it is submitted that the



complainant has filed Title Suit No. 284 of 2010 also in the Court of Sub-Judge-1st, Danapur, wherein relief has been sought for confirmation of title and possession over the suit land and further to declare the sale deeds as null and void *ab initio* and, as such, the impugned order is fit to be set aside and will be misuse of the process of law and wastage of court's valuable time. Earlier a proceeding under Section 144 Cr.P.C. was also initiated between the parties which was dropped, so considering the land dispute between the parties the impugned order appears not justified and the same is fit to be quashed.

The learned A.P.P. and learned counsel for the opposite party no.2, on the other hand, submit that the learned Magistrate after considering the statement of the complainant and statement of four witnesses has passed the impugned order of taking cognizance which is quite legal, proper and justified. The learned counsel for the opposite party no.2 does not deny regarding pendency of Title Suit No. 284 of 2010 between the parties.

Having heard the submissions urged at the Bar, going through the impugned order and records it is manifest that for declaring the sale deeds of the land in question for complaint case also as null and void, title Suit is pending between the



parties wherein the complainant is the plaintiff no.1 and the petitioners of this criminal miscellaneous are defendants and, as such, to that civil proceeding parallel criminal proceeding appears not maintainable and further in the complaint case it cannot be adjudged as to whether the sale deeds in question are genuine or null and void.

In my opinion, continuation of the proceeding of criminal case will be misuse of the process of law and wastage of court's valuable time.

In the result, the criminal miscellaneous is hereby allowed and the impugned order dated 29.07.2013 passed in Complaint Case No. 1161 (C) of 2010 passed by Sri Mahavir Prasad, the then learned Judicial Magistrate-1st Class, Patna is hereby quashed. Criminal Revision No. 893 of 2013 in the aforesaid background needs no adjudication and the same is hereby disposed of with this criminal miscellaneous.

(Jitendra Mohan Sharma, J.)

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