

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34665 of 2011

- =====
1. Kanhaiya Prasad S/O Premchand Prasad, Adopted Son Of Ramsurat Ram R/O Ward No. 25, Police Station Bhabhua, District - Kaimur At Bhabhua
 2. Sita Ram S/O Late Shri Kishun Ram R/O Ward No. 25, Police Station Bhabhua, District - Kaimur At Bhabhua
 3. Premchand Prasad S/O Late Shri Kishun Ram R/O Ward No. 25, Police Station Bhabhua, District - Kaimur At Bhabhua
 4. Chakra Sudarshan Prasad S/O Late Manik Chand Prasad R/O Ward No. 25, Police Station Bhabhua, District - Kaimur At Bhabhua

.... Petitioners

Versus

1. The State Of Bihar
2. Surendra Prasad Gond S/O Ramkrit Prasad Gond R/O Village - Akhleshpur, Police Station Bhabhua, District - Kaimur At Bhabhua At Present Bhabhua Ward No. 25, Police Station - Bhabhua, District - Kaimur At Bhabhua

.... Opposite Parties

=====

Appearance :

For the Petitioners : Mr. Sada Nand Ray, Advocate.

For the Opposite Parties : Mr. Narsing Tanti (APP)

=====

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

9 07-09-2017 The instant Criminal Miscellaneous has been filed for quashing the order dated 25.06.2010 passed By Sri R.S. Pandey, the then learned Judicial Magistrate, 1st Class, Kaimur at Bhabhua in Complaint Case No. 342 of 2010, whereby and whereunder, cognizance was taken for the offences under sections 467 and 504 of the I.P.C. against the accused persons (petitioners) and also for quashing the order dated 28.01.2011 passed by the learned Sessions Judge, Kaimur at Bhabhua in Criminal Revision No. 91 of 2010 by which the learned Sessions Judge was pleased



to dismiss the revision petition filed on behalf of the petitioners.

2. The opposite party no.2 Surendra Prasad Gond filed the aforesaid complaint case in the court of the Chief Judicial Magistrate, Bhabhua, stating therein, that one Indrani Kuer was the Fua of the complainant and Ram Surat Ram was Fufa and the complainant used to serve them, then on 09.07.2009 a deed of Will was executed by them in favour of the complainant. From the court on 13.01.2010 the complainant got an information that the Fua and Fufa has already taken adoption of Kanhaiya Prasad as their son and when he enquired from the records it was found that the said deed of adoption was filed by the accused persons to grab the property which are forged and fabricated documents. The registered deed of adoption was prepared on 07.08.1996 and the said deed was not executed by Fua and Fufa of the complainant. When the complainant enquired by the accused persons they abused and threatened to assault and thereafter the complaint case was filed.

3. The complainant was examined on the solemn affirmation and thereafter two enquiry witnesses, namely, Kameshwar Pandey and Shankar Prasad Gond were examined and after considering their statements the learned Magistrate passed the impugned order. The petitioners filed Criminal Revision No.



91 of 2010 which too was dismissed without considering that the deed of Will of the complainant is not a registered document, whereas, the deed of adoption is the registered document. The deed of adoption is dated 07.08.1996, whereas, the deed of Will of the complainant is dated 09.07.2009. The deed of Will was created by the complainant only with a view to lay false claim on the property. Further between the parties Title Suit No. 176 of 2010 is going on.

4. From bare perusal of the complaint petition and the statements of the complainant and the two enquiry witnesses it is manifest that the dispute is of civil nature, but the learned Magistrate and the learned Sessions Judge after ignoring all these things had passed the impugned orders. After death of Fua and Fufa the complainant got prepared false and fabricated deed of Will to grab the property belonging to the petitioners. The present case is out and out a civil dispute between the parties and as such no criminal offence is made out against the present petitioners. The orders passed by the learned courts below are illegal, unwarranted and not supported by the materials available on the record. No offences under sections 467 and 504 of the I.P.C. is made out against the petitioners and the present case is nothing but mere an abuse of process of the court and no purpose



would be served in asking the petitioners to face trial without any valid reason and as such the orders passed by the learned courts below are otherwise bad in law and are fit to be set aside.

5. The learned A.P.P., on the other hand, submits that the learned Magistrate has passed the order taking cognizance after considering that prima-facie offences are made out against the petitioners and the learned Sessions Judge has rightly dismissed the Criminal Revision as at the time taking cognizance there is limited scope and the defence of the accused persons cannot be adjudged.

6. Having considered the submissions urged at the Bar, going through the record and noticing that the alleged deed of Will of the complainant is not a registered document, whereas, the deed of adoption of the petitioners is a registered document and is of much earlier, further Title Suit No. 176 of 2010 is going on between the parties. The present dispute between the parties is out and out a civil dispute and as such putting the petitioners on trial will be an abuse of process of the court and no purpose would be served in asking the petitioners to face trial. The learned courts below have failed to consider that the complainant is basing his claim on Sada deed, whereas, the deed of adoption is a registered document and of much earlier. The learned courts



below without considering all these things had passed the impugned orders and as such the two orders are fit to be quashed.

7. In the result, the impugned order dated 25.06.2010 passed in Complaint Case No. 342 of 2010 corresponding to Trial No. 1819 of 2010 and the order dated 28.01.2011 passed in Criminal Revision No. 91 of 2010 by the learned Sessions Judge, Kaimur at Bhabhua are hereby quashed. Accordingly, this Criminal Miscellaneous is hereby allowed.

(Jitendra Mohan Sharma, J)

Abhay/-

U		T	
---	--	---	--

