

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33504 of 2014

Arising Out of PS.Case No. -758 Year- 2013 Thana -BHOJPUR COMPLAINT CASE District-
BHOJPUR

- =====
1. Sheo Kumar Singh, Son of Late Harihar Singh.
 2. Dadan Singh, Son of Sheo Kumar Singh.
Both resident of village- Budhwal, Police Station - Jagdishpur, District-
Bhojpur.

.... Petitioners.

Versus

1. The State of Bihar.
2. Prabhawati Devi, Wife of Dineshwar Kumar Singh.
Resident of village- Budhwal, Police Station - Jagdishpur, District- Bhojpur.

.... Opposite Parties.

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Appearance :

For the Petitioners : M/s. Baxi S.R.P. Sinha, Senior Advocate and
Rahul Nath, Advocate.

For the State : Mr. Dashrath Mehta, A.P.P.

For the Opposite Party No.2 : M/s. Nitesh Kumar & Anand vardhan, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 17-08-2017

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

2. This application, under Section 482 of the Code of
Criminal Procedure, is directed against the order dated 14.06.2014
passed in Complaint Case No.758(C) of 2013/Trial No.391 of 2014,
whereunder the court of the Judicial Magistrate, First Class, Bhojpur
at Ara, summoned the accused-petitioners, out of six persons, cited as
accused in the complaint petition, on inquiry, under Section 204 of the
Code of Criminal Procedure, finding prima facie case under Sections



420/34 of the Indian Penal Code.

3. The facts leading to this application are that the opposite party no.2 Prabhawati Devi filed Complaint Case No.758(C) of 2013 in the court of the Chief Judicial Magistrate, Bhojpur at Ara, with the contention that on 20.04.1987, Sundari Devi, wife of Ram Ashish Singh, executed the gift deed in her favour in respect of 1 acre 84½ decimal land of village-Uttarwari Jangal Mahal Jagdishpur on obtaining the permission to the Consolidation Department and, accordingly, she came in possession over the aforesaid land. Under the aforesaid land, Khesra No.1498, area 10 Katha of Khata No.380 was also included. On 31.07.2012, the accused-petitioner no.1 Sheo Kumar Singh, his son Dadan Singh (accused-petitioner no.2), Nirmal Kumar Gupta and Ajay Kumar under conspiracy of the deed writer Ajay Kumar Sinha and Yogendra Prasad got prepared the forged sale deed in respect to 10 Katha land of Khesra No.1498 of Khata No.380 in favour of Nirmal Kumar Gupta. When she came to know about the aforesaid forged sale deed, she enquired about the same in the Registry Office and got certified copy of the sale deed, then she made complaint to the accused-petitioner no.1 Sheo Kumar Singh and Nirmal Kumar Gupta as to why the forged sale deed has got been prepared and also made request to cancel the sale deed but they did not pay any heed.



4. Learned counsel for the petitioners submits that the petitioner no.1 purchased the land in question to Ram Ashish Singh, husband of Sundari Devi, through six sale deeds in the year 1990. Thereafter, the petitioners came to know about gift deed executed by Sundari Devi, wife of Ram Ashish Singh, for which the petitioners have filed Title Suit No.39 of 2002 for declaration of gift deed null and void as Sundari Devi, wife of Ram Ashish Singh, had no right and title to execute the gift deed. Moreover, the dispute, as alleged in the complaint petition, is of civil in nature, as such, summoning the accused-petitioners, on enquiry, under Section 202 of the Code of Criminal Procedure, through the impugned order is illegal.

5. Learned counsel for the complainant-opposite party no.2 argued that there is illegality in the impugned order but he has not disputed the facts about filing of Title Suit No.39 of 2002 by the accused-petitioners against Sundari Devi, wife of Ram Ashish Singh.

6. From perusal of the complaint petition, it appears that the dispute is of executing the sale deed by the petitioner nos.1 and 2, who are father and son respectively, in favour of Nirmal Kumar Gupta under conspiracy with the other accused, named in the complaint petition, in respect to Khesra No.1498, area 10 Katha, of Khata No.380, which was also included in the gift deed executed on 20.04.1987 by one Sundari Devi, wife of Ram Ashish Singh, in favour



of the complainant/opposite party no.2. There is no case of committing forgery in executing the sale deed. The right, title of Sundari Devi, who is said to execute the gift deed in favour of the complainant/opposite party no.2 is also challenged by filing Title Suit No.39 of 2002 by the accused-petitioners. The dispute appears to be of civil in nature. As such, the impugned order dated 14.06.2014 passed in Complaint Case No.758(C) of 2013/Trial No.391 of 2014 by the court of the Judicial Magistrate, First Class, Bhojpur at Ara, summoning the accused-petitioners, on inquiry, under Section 204 of the Code of Criminal Procedure, finding prima facie under Sections 420/34 of the Indian Penal Code is illegal and amounts to an abuse of the process of the court.

7. Accordingly, the impugned order dated 14.06.2014 passed in Complaint Case No.758(C) of 2013/Trial No.391 of 2014 by the court of the Judicial Magistrate, First Class, Bhojpur at Ara, as well as the entire criminal proceedings, arising out of the aforesaid complaint case, is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2017.
Transmission Date	25.08.2017.

