

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27357 of 2011

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Abdul Mannan Son of Md. Muslim, Resident of village- Khanpur, P.S.- Hathauri,
District – Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar
2. Saidur Rahman
3. Motiur Rahman
4. Safiur Rahman
5. Atiur Rahman

All sons of Late Abdul Bari, all resident of village Khanpur, P.S. - Hathauri,
District – Muzaffarpur

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Ganesh Prasad Singh, Advocate
For the State : Mr. Rajendra Pd. Nat, APP
For O.P. No. 2 : Mr. Md. Sufiyan, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 19-04-2017

Heard learned counsel for the petitioner and learned APP
for the State assisted by learned counsel for the opposite party no. 2.

2. The present petition has been filed for quashing of the
order dated 29.06.2011 passed by the learned Additional Sessions
Judge 5th, Muzaffarpur in Criminal Revision No. 147 of 2010 whereby
and whereunder the learned Judge has confirmed the order dated
17.06.2010 passed by the Executive Magistrate, Muzaffarpur by which
the learned Magistrate has directed the petitioner to demolish his
boundary wall situated on his land in the proceeding under Section 147
of the Code of Criminal Procedure (for short, “Cr.P.C.”) in Miscellaneous
Case No. 563 of 2000, Tr. No. 132 of 2008.



3. The short facts of the case, according to the petitioner, are that an application for initiating a proceeding under Section 144 of the Cr.P.C. was filed on 08.04.1999 by Late Abdul Bari, father of opposite party nos. 2 to 5 before Sub-Divisional Magistrate (East), Muzaffarpur against the petitioner and his sons relating to the disputed land of R.S. plot nos. 747, 744 and 737, with allegation against the petitioner that he has constructed a brick wall after encroaching 2 ½ feet of land south east of R.S. Plot nos. 747, 744 and has also encroached some part of R.S. plot no. 737. The S.D.O. called for a police report on 08.04.1999 itself and on the basis of the report submitted by the concerned Hathuari Police Station, the matter was converted into the proceeding under Section 147 of the Cr.P.C. and the case transferred to the Executive Magistrate for disposal. Before the Executive Magistrate, the opposite parties claimed that the petitioner has constructed brick wall over the said land of R.S.P. No. 745 after encroaching 2 ½ feet of land in R.S.P. nos. 744 and 747. The petitioner disputed the claim of rasta, stating that there never existed any such road in between R.S.P. Nos. 747, 744 and 737.

4. Learned counsel for the petitioner submits that the Executive Magistrate passed the order on 17.06.2010 in the proceeding under Section 147 of the Cr.P.C. without however deciding the claim that any particular Rasta was being used within a period of three months prior to initiation of the proceeding. This question has also not been considered by learned Additional District Judge 5th, Muzaffarpur



in the impugned revisional order dated 29.06.2011. It is therefore, submitted that there has manifestly been violation of the proviso to Section 147(3) of the Cr.P.C. which reads as follows:-

“.... (3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt. ...”

5. Learned APP for the State and learned counsel for the opposite party no. 2 to 5 have been heard. They are however unable to point out from the orders of the authorities that the requirements of Section 147(3) of the Cr.P.C. have been complied with.

6. Having heard learned counsel for the parties and on careful consideration of the materials on record, this Court finds merit in the application. From perusal of the orders of the Executive Magistrate and the Additional Sessions Judge 5th, it does not appear that either of the authorities has considered the relevant statutory



provisions aforesaid which are mandatory in nature. The provisions come into operation only if the right is exercised within three months next before receipt of the report of a police officer or other information leading to the institution of the inquiry. But in the present case, there is no such finding in that regard. In absence of any finding to the effect that right or claim had been exercised by the parties within three months prior to institution of the enquiry, the order passed under Section 147(3) of the Cr.P.C. would be without jurisdiction.

7. This Court is mindful that power under Section 482 of the Cr.P.C. is not ordinarily exercisable against orders passed in revision. However, as held in the case of Krishnan & Anr. Vs. Krishnaveni & Anr. (1997) 4 SCC 241, there is no absolute bar against the exercise of such inherent power in matters involving miscarriage of justice.

8. In the above circumstances, it must be held that the orders of the authorities are unsustainable in law for want of requisite finding in terms of the proviso to Section 147(3) of the Cr.P.C. which vitiates the entire proceeding. Accordingly, the order dated 17.06.2010 passed by the Executive Magistrate, Muzaffarpur in Miscellaneous Case No. 563 of 2000, Tr. No. 132 of 2008 as well as the order dated 29.06.2011 passed by the learned Additional Sessions Judge 5th, Muzaffarpur in Criminal Revision No. 147 of 2010, respectively are hereby set aside and the matter is remanded to the Executive Magistrate (East), Muzaffarpur to decide the matter afresh after grant of opportunity of hearing to the parties in accordance with law and



having regard to the provisions of Section 147(3) of the Cr.P.C. The application stands allowed.

(Vikash Jain, J)

B.T/-

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