

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33074 of 2014

Arising Out of PS.Case No. -3377 Year- 2012 Thana -SARAN COMPLAINT CASE District-
SARAN

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1. Sushila Devi w/o Late Surendra Nath Singh, resident of village Don Khurd, P.S.-Darauli ,District -Siwan ,at present village -Dumari ,P.S. Manjhi, District - Saran (Chapra)

2. Gajendra Kumar Singh, S/o Sri Chandradeo Singh , resident of village -Dumari ,P.S-Manjhi, District-Saran (Chapra)

.... Petitioners

Versus

1. The State of Bihar.

2. Bikramaditya Singh S/o Sri Kaushal Kumar Singh Village - Dumari, P.S. - Manjhi, District - Saran (Chapra).

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Singh, Advocate

For the State : Mr. Gulnar Begam, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 27-07-2017

This application has been filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973 quashing of order dated 25.9.2013 passed by Sri S.C. Srivastava, Judicial Magistrate, Chapra in Complaint Case No.3377 of 2012 whereby cognizance has been taken under Sections 467, 468, 471 and 506 of the Indian Penal Code and issued summons to them to stand trial in the case.

2. The complainant's case in brief is that the land in question came to the share of Jagat Narain Singh the great grand father of the complainant after death of Ambilka Singh, brother of



Jagat Narain Singh and Kaushal Kumar, father of the complainant executed sale deed with respect to that land in the year 1990 in favour of his wife who sold the same land to the wife of the complainant on 30.5.2007 and the same land was now sold by Sushila Devi to Gajendra Kumar Singh, so a forged sale deed was created by these two persons.

3. Learned counsel appearing on behalf of the petitioners submits that Jagat Narain Singh and Ambika Singh were full brothers. Jagat Narain Singh was a great grand father of the complainant. Ambika Singh had only son Bharat Singh, who had only three daughters and Sushila Devi is one of the daughters who has executed the sale deed in favour of petitioner no.2. Earlier there was no partition of the land. Sushila Devi has filed Partition Suit No.456 of 2011 which is pending in the court of Sub Judge-I, Chapra and the complainant has also filed Title Suit No.798 of 2012 for declaring the sale deed executed by Sushila Devi as null and void. Therefore, in this background, this is a case of civil nature and no criminal case is made out in the matter.

4. Learned counsel appearing on behalf of opposite party no.2 submits that there was oral partition in between both sides in the year 1977 itself and the land in question was sold by the mother of the complainant in favour of his wife and the said land was sold by



Sushila Devi.

5. Having considered the aforesaid rival submissions, it is apparent that allegation against the accused persons is that petitioner no.1 has executed a sale deed dated 13.7.2012 in favour of Gajendra Kumar Singh with respect to the land in question allotted into the share of his great grand father thereafter he sold this land in favour of his son Kaushal Kumar Singh, father of the complainant who later on executed sale deed in favour of his wife thereafter she transferred the same land in favour of her daughter-in-law, complainant's wife. It is an admitted position that both complainant and the petitioner no.1 are descendents of the common ancestors and Sushila Devi is the great grand daughter of Ambika Singh the full brother of Jagat Narain Singh the great grand father of the complainant. According to petitioner no.1 earlier there was no partition of the ancestral property and in recent past she has filed a Partition Suit No.456 of 2011. In this backdrop of the fact of the case, the execution of the sale deed by Sushila Devi does not come under the purview of making a false document in view of Section 464 of the Indian Penal Code. In the case of **Md. Ibrahim & Ors. Vrs. State of Bihar & Anr.** the Apex Court has decided that if a person executes a sale deed claiming title of the said land such act does not come within the purview of making of false document rather predominantly case is



of civil nature. Already complainant has filed Title Suit No.798 of 2012 challenging the sale deed, so continuation of the criminal proceeding in the instant matter would be abuse of the process of the Court, hence, the criminal proceeding including the cognizance order dated 25.9.2013 pending in the court of Sri S.C. Srivastava, Judicial Magistrate Ist Class, Chapra is set aside.

6. The petition stands allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	30-08-2017
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