

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.12852 of 2014

Arising Out of PS.Case No. -1688 Year- 2011 Thana -COMPLAINT CASE District- JAMUI

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1. Mumtaj Ahamad
 2. Maqbool Ahamad
 3. Zakee Anwar All are S/O Late Abdul Kayum Ansari Resident Of Hoda Manzil, Jhajha, P.S. Jhajha, District Jamui.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. M. Habibullah S/O M. Zainul Hoda Resident of Hoda Manzil, P.S. Jhajha, District Jamui.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Mishra

For the Opposite Party/s : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 21-07-2017

This is an application under Section 482 Cr. P. C. for quashing the order dated 21.11.2012 passed by learned Judicial Magistrate, 1st Class, Jamui in complaint case No. 1688 (c) of 2011 whereunder the petitioners were summoned to face the trial for the offence under Section 420, 467, 468, 471 and 504/34 of the I.P.C.

2. Heard both sides.

3. The facts in brief is that the O.P. No. 2 filed a complaint case on the file of C.J.M., Jamui alleging inter alia that his father and the father of these petitioners had purchased land measuring 7 ½



decimal in Plot No. 1593 and 1592 from Md. Daud, Bibi Khatoon and Abdul Khalid. The said land on partition came in the share of the father of the complainant. The petitioners in collusion with his father in order to garb his share in the land has fraudulently got created Jamabandi in the Government Record and thereby, cheated the complainant.

4. It has been submitted that the petitioners and complainant are descendents of common ancestors, who had purchased the land jointly. The complainant was residing in his house with the permission of the father of these petitioners. The land upon which the house was constructed was the exclusively acquired in the name of these petitioners. These petitioners have filed an Eviction Suit No. 01 of 2011 in the court of Sub Judge 1st, Jamui for the eviction of the complainant and his father. Besides that, a Partition Suit No. 81 of 2012 is also pending with respect to the land in question. The petitioners never filed any application for creation or separation of Jamabandi with respect to the holding in question. There is nothing on record to show that the petitioners created any document or cheated the complainant in any way. The court below without applying judicial mind has summoned the petitioners and so, the impugned order is fit to be quashed.



5. The learned APP opposed the submissions.

6. On perusal of complaint petition and its annexures filed with the petition, I find that the petitioners have filed an Eviction Suit No. 01 of 2011 on 11.05.2011 for evicting the complainant and his father from the house occupied by them. After institution of said suit, the complainant filed the present case against the petitioners on 14.12.2011. The complainant has not whispered about the filing of eviction suit by the petitioners. Besides that, a partition suit is also pending between the parties. The complainant has alleged that the petitioners got created a Jamabani in their name in collusion of tax collector and other officials of Block Office. The allegation appears vague and no specific act of cheating or fabricating document has been alleged against the petitioners. The dispute between the parties appears to be a pure civil dispute. Both parties are descendents of common ancestors. Both parties claim that the land was acquired by virtue of registered sale deed in the joint/ exclusive name. The parties are fighting two civil suits for their right in landed property. In view of nature of dispute and also pendency of two civil suits, the criminal prosecution of the petitioners would amount to abuse of process of Court.

7. As such, I find that the order summoning the petitioners



is not sustainable in the eyes of law. The order dated 21.11.2012 passed by learned Magistrate, 1st Class, Jamui in Complaint Case No. 1688 (c) of 2011 is quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.07.2017
Transmission Date	24.07.2017

