

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35653 of 2016

Arising Out of Case No. -51 Year- 1996 Thana -Goh District- AURANGABAD

Kedarnath Sharma @ Kedar Singh, S/o Late Ram Dhani Singh, resident of village-Malahad, P.O.-Malahad, P.S.-Goh, District-Aurangabad.

.... Petitioner

Versus

1. The State of Bihar
2. Sarawati Prasad Singh, S/o Late Balmiki Prasad Singh
3. Sri Arun Kumar Singh.
4. Sri Anil Kumar Singh.
5. Dr. Anjani Kumar Singh.

O.P. No. 3, 4 and 5 are sons of Late Babu Madan Mohan Singh.

6. Sri Alok Kumar.

7. Sri Sanji Kumar,

Both O.P. No.6 & 7 are sons of Late Babu Trijugi Prasad Singh

All are residents of Village + P.O.-Malahad, P.S.-Goh, District-Aurangabad.

.... Opposite Parties

Appearance :

For the Petitioner/s : Mr. Purushotam Sharma, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-01-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr. P.C.') has been filed by the petitioner for quashing the order dated 30.05.2016 passed in Cr. Revision No.90 of 2003/03 of 2016 by the learned Additional Sessions Judge-IV, Aurangabad whereby he has set aside the order dated 24.05.2003 passed by the learned Executive Magistrate, Aurangabad in Case No.51 of 1996 corresponding to Trial No.9 of 2002 by which in a proceeding under Section 145 of the Cr. P.C.



possession of the petitioner was declared over the lands in question.

2. Learned counsel for the petitioner submitted that the revisional court did not appreciate the facts and law involved in the case in correct perspective. He submitted that the possession of petitioner was rightly declared by the court of Executive Magistrate and there was no reason for the revisional court to interfere with such order.

3. On the other hand, learned counsel for the State submitted that from perusal of the impugned order passed by the Executive Magistrate, it would be manifest that he completely misdirected himself to enter into intricate and complicated question of title and misconstrued the provisions of Section 110 of the Indian Evidence Act to make an erroneous interpretation. He submitted that the Executive Magistrate in his order gave a finding that the possession is prima facie evidence of title and a person who has title has the possession also and on this score alone, the order passed by the Executive Magistrate was fit to be set aside and, thus, revisional court has rightly allowed the revision application and set aside the order passed by the learned Executive Magistrate.

4. I have heard learned counsel for the parties and perused the record.

5. The findings of the revisional court are as under:-

“11. From perusal of impugned order it



appears that it contains details of evidence adduced by the parties but at the same time it lacks evaluation of admissible evidence of the parties and oral evidence at the factum of possession have not been evaluated to arrive at a conclusion. It appears that the learned court below completely misdirected itself to enter into intricate and complicated question of title and has misconstrued the Provisions of Section 110 of the Indian Evidence Act to make an erroneous interpretation thereof that possession is prima facie evidence of title and a person who has title has possession also. In my view it is not correct interpretation of Provision aforesaid which relate to burden of proof as to ownership of a person shown in possession of the property.

12. I do not find and hold the view that the learned counsel below was obsessed with the notion that the first party had title to the lands in question and applied abstract principle of possession follows title in the facts and circumstances even in total absence of evidence of title of the first party. Even in order dated 17.02.1998 passed in C.W.J.C. No.1363 of 1996 the Honourable High Court made observation that so far right, title or possession is concerned, a party may move before the civil court for declaration of right, title and confirmation of possession.

In a proceeding U/S 145 of the Code of Criminal Procedure what is to be appreciated is clear and unambiguous evidence of actual physical possession and question of title is to be incidentally



adhered to in exceptional circumstance to corroborate and evaluate other evidence in order to decide the question of possession if there is clear declaration of title by a civil court of competent jurisdiction in favour of one party and against another whose evidence of actual possession is not reliable. In that circumstance such determination of title by a competent civil court is to be respected. But this not the case here. The learned court below completely failed to evaluate oral evidence on record as to actual physical possession over the land in question and failed to evaluate and appreciate documentary evidence in correct perspectives and erroneously held that the first party had title to the property in dispute. In my view, the learned court below usurped jurisdiction not vested in it.

13. Furthermore the learned court below has erroneously held that the rent receipts field on behalf of the first party were evidence of possession. The law in this regard is well settled that the rent receipts have no presumptive value on the question of title or possession and are mere evidence of payment of land revenue.

14. On above discussions I do find and hold the view that the learned court below failed to evaluate evidence on record as to actual physical possessions over the land in question and also failed to take note of the fact that some of the disputed plots were amalgamated with own lands of the second party and passed impugned order which is quite illegal and without jurisdiction.



15. For the foregoing reasons the impugned order does not withstand the test of legality, correctness and propriety as such the same cannot be sustained. The present criminal revision has sufficient merit. It is therefore

ORDERED

The present criminal revision be and the same is hereby allowed. The impugned order of learned Executive Magistrate, Daudnagar is set aside. The matter is remitted back to the learned court below to hear the parties and pass order afresh in accordance with law”.

6. In the opinion of this Court, the order passed by the revisional court does not suffer from any illegality or irregularity. The revisional court has rightly held that it is not the correct interpretation of law that possession is prima facie evidence of title and a person who has title has the possession also.

7. In that view of the mater, I see not merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.01.2018
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