

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46832 of 2014

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1. Azadi Sao son of Late Dewaki Sao, resident of village - Kusumbha Halt,
P.S. and District - Sheikhpura

.... Petitioner/s

Versus

1. The State of Bihar
2. Siasharan Prasad, son of Late Sheetal Prasad
3. Bal Krishna Prasad @ Tuni son of Siasharan Prasad All residents of
village - Kusumbha Halt, P.S. and District - Sheikhpura

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kailash Behari Verma

For the Opposite Party/s : Mr. Abhay Kumar 1(App)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 02-04-2018 The petitioner has challenged the order dated 26.12.2012 passed by the learned Executive Magistrate, Sheikhpura in Case No. 938M/2002, by which the possession of the land in question was declared in favour of opposite party no. 2; as also the revisional order dated 25th July, 2014, passed in Cr. Revision No. 80/2013 by the learned Adhoc A.D.J. 1st, Sheikhpura, whereby the order passed by the Executive Magistrate has been affirmed and upheld.

Mr. Raghav Prasad, learned counsel appearing for the petitioner has submitted that both the courts below have not at all taken into consideration that under Section 145 of the Cr.P.C., what was to be seen by the courts below was only the possession and not the title. The possession has been declared in favour of O.P. No. 2



only on the basis of the sale deed of 1992 which was executed by one Sanjida Khatoon in favour of the wife of O.P. no. 2, who is now dead. It has further been submitted that the consistent case of the petitioner before the courts below had been that the land in question was initially sold by aforesaid Sanjida Khatoon in the year 1992 in favour of the wife of O.P. No. 2. However, since the consideration money was not given by the wife of O.P. No. 2, a cancellation deed was executed and thereafter in the year 1996, by the registered sale deed, 15 decimals out of the land so initially vended in favour of wife of O.P. No. 2 was sold in favour of the wife of the petitioner, viz. Gayatri Devi. Both the courts below, it has been argued, have gone on the issues that after a sale deed is executed, it cannot be cancelled because of non-payment of consideration money and in such an event, the vendee shall be held to be the owner of the property in question. The only option for the vendor in that case would be to sue the vendee for payment of the money.

With reference to the concluding portion of the order passed by the learned Magistrate, it has been submitted on behalf of the petitioner that but for that account, referred to above, no consideration was made on any one of the issues concerning the possession of the petitioner over the said plot of land.

As opposed to the aforesaid contentions of the petitioner, Mr. Pankaj Kumar, learned counsel appearing for the O.P.



No. 2, has submitted that if the title in favour of O.P. No. 2 is found to be in place, it only supposes that the O.P. No. 2 would have the rightful possession over the same. This argument gets further strengthened, it has been submitted, in the event of either of the parties not furnishing any document with respect to the possession. The other ground which has been raised by O.P. No. 2 in support of the orders impugned is that the rent receipts which have been furnished by the petitioner in support of the proof of his possession over the land has been disbelieved by both the courts, in as much as P.W. 4 has stated that he has no idea as to how the rent receipt was prepared, even though it was under his signature.

In the present case, at the instance of the petitioner, a 144 proceeding was initiated which was converted into Section 145 Cr.P.C.

The learned Magistrate while dealing with the matter, took the evidence of the parties but came to the conclusion that the possession was of O.P. No. 2 merely on the ground that there was a valid sale deed of 1992 and which sale deed had been seen/ witnessed by the petitioner at the time of purchasing the property again after the so called cancellation of the sale deed.

Thus, from the orders impugned, it appears that there has not been any consideration with respect to possession of the land in question. If the sale deed offered on behalf of the petitioner was



not relied upon or accepted to be the document in favour of the petitioner for proving his possession, there was no document on behalf of the O.P. No. 2 also in support of his claim for possession over the land. In such a situation, the court below, only relying on the genuineness and the survivality of the sale deed of 1992, decided about the possession being of O.P. No. 2.

For the aforesaid reason, both the orders are set aside as they do not seem to advert to the issue of possession at all.

The matter is remitted to the learned Magistrate again for deciding about the possession of the parties. Learned Magistrate shall on receipt/production of a copy of this order shall issue notice to the parties and after receiving evidence in that regard shall pass a reasoned order without any unnecessary delay.

With the aforesaid observation/direction, the present petition is disposed of.

(Ashutosh Kumar, J.)

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