

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20885 of 2018

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHEPURA

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Ram Narayan Mehta son of Late Gango Mehta, resident of village- Tikuliya, P.S.-
Kumarkhand, District- Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Nabab Mehta son of Late Fani Lal Mehta, resident of village- Tikuliya, P.S.-
Kumarkhand, District-Madhepura.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gopal Mohan Jha, Advocate
: Mr. Amar Nath Jha, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 14-08-2018

The defects, as pointed out by the Registry, are ignored.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for setting aside the order dated 28.11.2017 passed by the learned Sessions Judge, Madhepura in Criminal Revision No.51 of 2017 by which the revision application has been dismissed and the order dated 08.02.2017 passed by the learned Sub Divisional Magistrate, Madhepura in Miscellaneous Case No.46 of 2016



whereby and whereunder he has declared the factum of possession in favour of opposite party no.2 of the land in question and restrained the petitioner from interfering into peaceful possession of opposite party no.2 has been upheld.

3. The petitioner filed a petition before the Sub Divisional Magistrate, Madhepura for initiation of proceeding under Section 145 of the Cr.P.C. in respect of the property mentioned in the order impugned passed by the learned Sub Divisional Magistrate, Madhepura. On the application of the petitioner, a report was called for by the learned Sub Divisional Magistrate, Madhepura from the S.H.O. Kumarkhand and, after enquiring into the matter, the S.H.O., Kumarkhand submitted his report on 17.01.2016 and recommended for initiation of a proceeding under Section 145 of the Cr.P.C. The learned Sub Divisional Magistrate being satisfied with the report of the police officer as also on the application of the petitioner that a dispute likely to cause breach of peace exists concerning the land in question, issued summons to opposite party no.2 and asked him to file written statement and adduce evidence. After obtaining summons and the notice, the opposite party no.2 filed written statement and adduced both oral and documentary evidence in support of his rightful possession over the land in question.

4. The learned Sub Divisional Magistrate having



appreciated the evidence adduced on behalf of the parties and on the basis of the materials available on record came to a conclusion that it is the opposite party no.2, who is in possession of the property in question. Accordingly, he declared the possession of opposite party no.2 over the land in question and restrained the petitioner from interfering into the peaceful possession of opposite party no.2 vide order dated 08.02.2017. The order passed by the learned Sub Divisional Magistrate, Madhepura was challenged in revision before the learned Sessions Judge, Madhepura. The learned Sessions Judge, Madhepura having considered the materials on record and after hearing the parties, while passing the impugned order, observed as under:

“It appears from perusal of the Lower Court’s case record that on 30.06.2016 1st party to the proceeding who is petitioner before this Court was ordered to adduce his evidence and thereafter the case travelled for 17 dates till 25.11.2016 and on that date evidence of 1st party was closed on his prayer and as such the first contention of the petitioner (1st party) that no sufficient time was granted to him for adducing evidence is not acceptable and so far the second ground that the report of the Sarpanch, report of the C.O. was not considered is concerned while passing the impugned order is also not acceptable because I do not find any



such order sheet in between the tenure of the evidence of 1st party starting from 19.07.2016 to 25.11.2016 on which date these two papers were either filed or exhibited and further there is no any exhibit list prepared in the name of 1st party to show that the aforesaid two papers as cited above by the petitioner was ever exhibited in the evidence of the party in the court below and furthermore it appears from perusal of the evidence of 1st party witness no.5 namely Raj Kishore Ram that he has clearly admitted in his evidence that Nabab Mehta has grown the paddy crop over the disputed land which is none else rather is the 1st party to the proceeding in the court below and as such I am of the view that the impugned order passed by the learned Lower Court is sustainable under law and this Criminal Revision Application is fit to be dismissed.”

5. It would be relevant to note here that in the impugned order it has been inadvertently recorded that Nabab Mehta is first party. As a matter of fact, he was second party in the proceeding before the learned Sub Divisional Magistrate, Madhepura and it was he who was found in possession over the land in question. The reasons assigned by the revisional court for dismissing the application of the petitioner do not suffer either from any illegality or irregularity.



The order impugned is not even perverse. Moreover, though the instant application has been filed under Section 482 of the Cr.P.C. by the petitioner, the same is in the nature of second revision, which is barred under Section 397(3) of the Cr.P.C.

6. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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