

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5086 of 2016

- =====
1. Dinesh Yadav
 2. Ganesh Yadav
 3. Suresh Yadav All are sons of Late Bhola Yadav
 4. Madheshwari Yadav @ Maheshwari Yadav son of Late Nokhelal Yadav
All are residents of village - Chandanpatti, P.S. - Gamharia, District -
Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Kapil Deo Yadav
3. Ram Kumar Yadav
4. Laxman Yadav
5. Amlesh Yadav All are sons of Late Ramotar Yadav All are residents of
village - Chandanpatti, P.S. - Gamharia, District - Madhepura.

.... Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr. Shyam Kr.Singh (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 26-10-2018 Heard learned counsel for the petitioners as well as
learned APP.

2. Instant petition has been filed purported to be
under Section 482 CrPC against an order dated 27.09.2011 passed
in Misc. Case No. 744/96 by Sub-Divisional Magistrate,
Madhepura as well as order dated 03.11.2015 passed in Cr.
Revision No. 93/2011 by ADJ-III, Madhepura.

3. By an order dated 27.09.2011 the possession of
the Opposite Parties No. 2 to 5 have been declared over the
disputed land after concluding trial under Section 145 CrPC and in



likewise manner, the learned Revisional Court had dismissed the revision petition affirming the order of the learned Magistrate.

4. Initially, a proceeding under Section 144 CrPC was initiated relating to CS Khata No. 267, Khesra No. 3085, area- 59 Decimal corresponding to RS Khata No. 544, Khesra No. 3720, CS Khata No. 267, Khesra No. 3087, area 48 decimals corresponding to RS Khata No. 3658 having specific boundary, North-Ramu Gupta, South-Nunulal Yadav, East-Ramu Gupta, West- Kamal Yadav, North-Ram pd. Swarnkar, South-Harihar Gupta, East-Nunulal Yadav and West-Ram Pd. Swarnkar respectively.

5. Without advertng to the merit of the case, it is evident from the respective orders that learned lower courts have acted in an illegal manner while appreciating the evidence, more particularly, while appreciating the documentary evidence. Before coming to the issue, it looks pertinent to quote the relevant provision attracting thereto i.e. Section 145(4) of the CrPC.

(4) The Magistrate shall then, without, reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub- section (1), in possession of the subject of dispute: Provided that if it appears to



the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1).

6. Evidence in terms of Evidence Act includes oral as well as documentary evidence. Documentary evidence is bifurcated in two parts, primary and secondary. Primary evidence is where document in its original form is placed. Secondary nature of the evidence happens to be firstly in absence of original document and further there should be either certified copy, or copy of the original and if it is not a public document, then in that circumstance, the secondary evidence are to be properly exhibited and for that, requirement for getting those documents exhibited, are to be fulfilled. So far photo copies are concerned, it should bear a certificate by a person who had photo and in likewise manner, there should be a certificate at the end of the person who had tallied it and found it correct along with the fact that those witnesses would have come up in the witness box to substantiate the same.

7. It is apparent that those things have not been properly exercised. In the aforesaid background, learned lower court based



upon its findings over the material which as stated above, could not be considered as a legal evidence, consequent thereupon, are set aside.

8. Petition is allowed.

(Aditya Kumar Trivedi, J)

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