

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 19759 of 2015

Arising Out of Complaint Case No.-124 C Year-2012 Thana- SHEIKHPURA COMPLAINT
CASE District- Sheikhpura

1. Md. Ozair Ahmad @ Md. Ozair
2. Md. Sohail Ahmad @ Md. Sohail
3. Md. Zunaid
4. Md. Shahzad @ Md. Sajjad
Petitioner nos. 1 to 4 sons of Late Md. Alam
5. Md. Bachchu Son of Late Munshi Nejam
6. Md. Naki Imam @ Md. Nakee Imam
7. Md. Shakir
Both Sons of Md. Fakhruddin All resident of Murgiachak, Police Station-
Sare, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Azhar Karim Son of Late Abdul Rajjak Resident of Village- Ramjanpur,
Police Station- Barbiga, District- Sheikhpura.

... .. Opposite Party/s

with

Criminal Miscellaneous No. 37013 of 2014

Arising Out of Complaint Case No.-216 C Year-2012 Thana- SHEIKHPURA COMPLAINT
CASE District- Sheikhpura

1. Md. Ozair Ahmad @ Md. Ozair
2. Md. Sohail Ahmad
3. Md. Zunaid
Petitioner Nos. 1 to 3 Sons of Late Md. Alam
4. Md. Bachchu Son of Late Mushy Nejam
5. Md. Naki Imam @ Maha Naki Imam
6. Md. Shakir
Both Sons of Md. Fakhruddin All resident of Village - Murgiachak, Police
Station - Sare, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Azhar Karim Son of Late Abdul Rajjak Resident of Village - Ramjanpur,
Police Station - Barbiga, District - Sheikhpura.

... .. Opposite Party/s

with

Criminal Miscellaneous No. 19325 of 2015



Arising Out of Complaint Case No.-216 C Year-2012 Thana- GOVT. OFFICIAL
COMPLAINT CASE District- Sheikhpura

Md. Shahzad @ Md. Sajjad Son of Late Md. Alam, Resident of Village -
Murgiachak, Police Station - Sare, District - Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Azhar Karim Son of Late Abdul Rajjak Resident of Village - Ramjanpur,
Police Station - Barbigaha, District - Sheikhpura.

... .. Opposite Party/s

Appearance :

(In Criminal Miscellaneous No. 19759 of 2015)

For the Petitioner/s : Mr. Binay Kumar and
Mr. Md. Anamul Haque, Advocates

For the State : Mr. A.P.P.

(In Criminal Miscellaneous No. 37013 of 2014)

For the Petitioner/s : Mr. Binay Kumar and
Mr. Md. Anamul Haque, Advocates

For the State : Mr. Md. Arif, A.P.P.

(In Criminal Miscellaneous No. 19325 of 2015)

For the Petitioner/s : Mr. Binay Kumar and
Mr. Md. Anamul Haque, Advocates

For the State : Mr. A.P.P.

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 11-02-2019

Heard learned counsel for the petitioners; learned A.P.Ps.
for the State and learned counsel for the opposite party no. 2.

2. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 (hereinafter referred
to as the 'Code') for the following relief in Cr. Misc. No. 19759 of
2015:

*"That this is an application for invoking
the inherent powers of this Hon'ble Court for
quashing the order taking cognizance & issuing
summon dated 05.12.2012 in Case No. 124C of*



2012 passed by learned Chief Judicial Magistrate Sheikhpura by which he has most arbitrarily and quite erroneously directed the petitioner to face trial under sections 147, 148, 447, 323, 504 and 379 Indian Penal Code pending in the court of learned Chief Judicial Magistrate, Sheikhpura.”

In Cr. Misc. No. 37013 of 2014:

“That this is an application for invoking the inherent powers of this Hon’ble Court for quashing the order taking cognizance & issuing summon dated 18.03.2013 in Case No. 216C of 2012 passed by learned Chief Judicial Magistrate Sheikhpura by which he has most arbitrarily and quite erroneously directed the petitioner to face trial under sections 147, 148, 447, 379 Indian Penal Code pending in the court of learned Chief Judicial Magistrate, Sheikhpura.”

and in Cr. Misc. No. 19325 of 2015:

“That this is an application for invoking the inherent powers of this Hon’ble Court for quashing the order taking cognizance & issuing summon dated 18.03.2013 in Protest-cum-Complaint Case No. 216C of 2012 passed by learned Chief Judicial Magistrate Sheikhpura by which he has most arbitrarily and quite erroneously directed the petitioner to face trial under sections 147, 148, 447 and 379 Indian Penal Code pending in the court of learned Chief Judicial Magistrate, Sheikhpura.”

3. The allegation against the petitioners is that on the land belonging to the opposite party no. 2, they had forcibly come and cut the crops and had also manhandled the opposite party no. 2 and taken away Rs. 5,00/-.



4. Learned counsel for the petitioners submitted that the allegations are totally false. It was submitted that the land claimed by the opposite party no. 2 through his vendor could not have been sold to him for the vendor himself had no right or title over the land as the land which was ancestral and belonging to his grandfather; in the lifetime of his grandfather, his father having died, the land could not have devolved on him and in law was distributed among the other heirs who were alive at that time. Learned counsel submitted that the opposite party no. 2 also got his mutation done fraudulently as the sale deed in his favour could not have given him the right and title over the land for the law is settled that the vendor cannot pass on a title better than his own and the vendor of the opposite party no. 2 himself not being the heir to the land in question, any sale deed executed by him has no value in the eyes of law and cannot be enforced. Learned counsel further submitted that the allegation against the petitioners of forcibly cutting the crop standing on the said land is also not correct since they were coming in possession since long back and only in the year, 2010, when the opposite party no. 2 got the land registered in his favour, such situation had arisen. Learned counsel further submitted that the mother of petitioners no. 1 to 4 has filed Title Suit No. 45 of 2011 before the Sub-Judge, Sheikhpura



against the opposite party no. 2 and his vendor, against the sale deed executed in favour of the opposite party no. 2, which is still pending. Learned counsel submitted that the allegation of cutting the crops is therefore false as it was the petitioner's land on which they had sown the crops and had also cut the crops. Learned counsel submitted that the allegation of taking Rs. 5,00/- is cosmetic in nature. Learned counsel submitted that the defence that an act was done in the *bona fide* claim of title has been held to be valid by the Hon'ble Supreme Court in the case of **Chandi Kumar v. Abanidhar Roy** reported as **A.I.R. 1965 SC 585** and **Apparao v. Lakshminarayana** reported as **A.I.R. 1962 SC 586**. It was further submitted that mere entry in the mutation records would not confer any title on the opposite party no. 2 with regard to the said land. Learned counsel further submitted that the copy of the document brought on record showing the name of the father of the vendor of the opposite party no. 2 in the Government records, is a forged and fabricated document as it is not a certified copy.

5. Learned A.P.P. submitted that the opposite party no. 2 has some sort of legal claim by way of mutation in his favour which has to be finally settled by the Civil Court but till such time



the petitioners could not have themselves unilaterally gone on the land and cut the crops.

6. Learned counsel for the opposite party no. 2 submitted that the submissions of learned counsel for the petitioners is misconceived. It was submitted that in the counter affidavit filed, he has brought on record the copy of the relevant extract from Government records, which shows that not only on the land in question but eight other plots also, the name of the father of his vendor has been recorded. Learned counsel further submitted that nowhere have the petitioners stated, either before this Court or before the Court below, with regard to when they claim the father of the vendor of the opposite party no. 2 died and when the grandfather died, so as to show that under the Muslim Personal Law, the vendor of the opposite party no. 2 had lost his right of inheritance. It was further pointed out that in the title suit filed by the mother of the petitioners no. 1 to 4, against the opposite party no. 2 and his vendor, in the relief portion, one of the reliefs sought is for granting injunction against the opposite party no. 2 and his vendor from changing the physical features of the disputed land. It was submitted that this in fact goes to show that the possession of the opposite party no. 2 and his vendor was existing at such time. With regard to the stand taken by learned



counsel for the petitioners that the document brought on record is forged and fabricated, learned counsel submitted that he can show that the same is the true copy of the original Government records and further that despite copy of the same having been brought on record after service on learned counsel for the petitioners on 07.07.2015, till date, there is no rebuttal to the same and, thus, the petitioners cannot at the time of final arguments raise an objection purely on facts after more than three and a half years of them being aware of such documents having been brought on record in the present proceeding.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. It is not in dispute that with regard to the sale deed and the order for mutation, the same has to be sorted out before the Civil Court of competent jurisdiction and also that merely an order of mutation or entry in such record may not be a proof of title, but definitely they lend some credence in support of the claim of the opposite party no. 2 on the land. Moreover, the Court finds substance in the contention of learned counsel for the opposite party no. 2 that in the title suit itself, the plaintiffs have asked for an injunction to prevent the opposite party no. 2 and his vendor from making any



changes in the physical features of the land in question is an admission that the defendants (opposite party no. 2/ his vendor) were in possession. As far as the decisions relied upon by learned counsel for the petitioners in the cases of **Chandi Kumar** (supra) and **Apparao** (supra), the Court finds that such decisions were rendered in a different context, inasmuch as, the Hon'ble Supreme Court has held that a defence of *bona fide* impression of title over any object, which is alleged to have been stolen or of which theft has been committed, is a good defence, shall be available to the petitioners, only during the trial, but not at this stage when the Court is considering the issue with regard to taking of cognizance. Even after that, the petitioners still have the stage at the time of framing of charge when they can present before the Court all materials and defence available with them, which are to be considered by the Court below before it proceeds to frame charge in the matter.

8. In view of the aforesaid, the application stands disposed off with the observation that if the petitioners file any application at the appropriate stage, including at the time of framing of charge, raising all points available to them and materials in support thereof, the same shall be considered, in



accordance with law, on its own merits, without being prejudiced
by the present order.

(Ahsanuddin Amanullah, J.)

P. Kumar

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