

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 183 of 2018

Arising Out of PS Case No.- Year- Thana- District- Purnea

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1. Pranshu Kumar Mishra @ Pranshu Pranesh, Son of Arjun Kumar Mishra.
 2. Arjun Kumar Mishra, Son of Late Chuman Mishra, Both are Resident of Ward No. 12 Nehru Chowk, Dhamdaha Both, Police Station- Dhamdaha, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sub Divisional Magistrate, Dhamdaha, P.O. and P.S.- Dhamdaha, District- Purnea.
3. Amrendra Kumar Jha Son of Bauwe Lal Jha.
4. Birendra Kumar Jha Son of Bauwe Lal Jha.
5. Devendra Kumar Jha Son of Bauwe Lal Jha, Opposite Party Nos. 3 to 5 are Residents of Dhamdaha North, Post Office and P.S.- Dhamdaha , District- Purnea.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Gyanand Roy, Advocate
For the Opposite Parties No. 3 to 5	:	Mr. Mrityunjay Kumar, Advocate
For the State	:	Mr. Arun Kumar, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 21-11-2019

Heard learned counsel for the petitioners; learned APP for the State and learned counsel for the opposite parties no. 2 to 5.

2. The petitioners have moved the Court for setting aside the order dated 30.11.2017 passed by the Sub Divisional Magistrate, Dhamdaha in the district of Purnea in Case No. 420M of 2017, by which he has initiated proceeding under Section



147(1) of the Code of Criminal Procedure, 1973 and the consequential notice dated 30.11.2017 directing the petitioner to appear in his Court and submit written statement as to why the passage which has been blocked over the land in question should not be removed. The subsequent notice dated 07.12.2017 has also been assailed.

3. It is the stand of learned counsel for the petitioners that in the year 1990, they had purchased a piece of land admeasuring an area of 1 katha 10 dhurs and subsequently, in the year 1992, the mother of opposite parties no. 2 to 5 had also purchased another portion of the land from the same vendor having an area of 2 kathas. It was submitted that in the sale deed of the petitioners, it had been stated that they would be given 5 feet passage for approaching the land.

4. It is the stand of learned counsel for the opposite parties no. 2 to 5 that the said passage was not part and parcel of the sale deed as it was beyond the area which was sold to the petitioners and, thus, the passage cannot be appropriated solely by the petitioners as it is a common passage through which the opposite parties no. 2 to 5 are also entitled in law to use. It was submitted that in fact, only because there existed a passage, the



mother of the opposite parties no. 2 to 5 had purchased the land as otherwise there was no ingress or egress to the land in question.

5. Having regard to the aforesaid, the Court finds that the matter is simple and was not required to be kept pending for so long. On the basis of the sale deeds of the respective parties, the local administration was only required to go and demarcate the area, as was transferred by the original vendee in favour of the respective parties. Anything beyond that cannot be appropriated by either of the parties exclusively and on which the right of both the parties would naturally exist.

6. Learned counsel for the parties agree to such an exercise.

7. In view thereof, the application stands disposed off with a direction to the Sub Divisional Magistrate, Dhamdaha in the district of Purnea to get the land demarcated in his presence after getting it measured in the presence of the parties and their Amins on a mutually agreeable date. It shall be ensured that an area of 1 katha 10 dhurs, as per the sale deed of the petitioners and 2 kathas, as per the sale deed in favour of the mother of the opposite parties no. 2 to 5, is demarcated on the ground. With regard to any other area, which may fall outside the purview of the said two sale deeds, the same shall be considered to be for



common use without being exclusively appropriated by either of the parties and over which no construction by any party shall be made and no obstruction created.

8. The said exercise shall be concluded within one month from the date of production of a copy of this order before the officer(s) concerned.

9. It shall be open to any party which is dissatisfied with the result of the exercise to approach the appropriate forum, in accordance with law.

(Ahsanuddin Amanullah, J.)

P. Kumar

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