

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 131 of 2018

Arising Out of Misc Case No.- 76Year-2015 Thana- District- Siwan

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Surendra Singh, Son of Late Narsingh Singh, Resident of Village -
Bankajuwa, P.O. - Chorama, P.S. - Bhagwanpur Hat, District - Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Bhagwan Singh.
3. Krishna Singh.
4. Kanhaiya Singh. From 2 to 4 are sons of Late Naresh Singh
5. Sarsati Devi.
6. Jata Devi.
7. Gyanmala Devi.
8. Nirmala Devi From 5 to 8 are Daughters of Late Naresh Singh. All are
resident of Village - Bankajuwa, P.O. - Chorama, P.S. - Bhagwanpur Hat,
District - Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Udit Narayan Singh and Mr. Gajendra Kumar Singh, Advocates
For the Opposite Party/s :		Mr. Sanjay Kumar Pandey and Mr. Anjani Prasad, Advocates
For the State	:	Mr. A. Dayal and Mr. Jharkhandi Upadhyay, APPs

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

ORAL JUDGMENT

Date : 06-08-2019

Heard learned counsel for the petitioner; learned APP
for the State and learned counsel for the opposite parties no. 2 to
8.

2. The petitioner has moved the Court under Sections
397 and 401 of the Code of Criminal Procedure, 1973 (hereinafter
referred to as the 'Code') against the order dated 19.12.2017



passed by the Additional District and Sessions Judge, IV, Siwan in Criminal Revision No. 02 of 2016, by which he has set aside the order dated 06.07.2015, passed by the Executive Magistrate, Maharajganj under Section 145 of the Code in Misc. Case No. 76 of 2015, declaring the possession of the petitioner on Khata No. 99, Plot No. 1269 having area of 1 Katha 3 dhurs.

3. The petitioner claims to have bought the land out of the ancestral property of Dularo Kuer, who inherited it from her father Saryug Thakur after there being partition between the coparceners. The same share of 1 Katha 3 dhurs of land purchased by the petitioner is said to have also been taken possession by him upon proper demarcation. However, from the sale deed, the boundaries are not clearly demarcated as it is only said that the land is in the middle of a larger plot in which the other sharers have also their share of land. The Executive Magistrate on a petition filed by the father of the opposite parties no. 2 to 8 had initiated action under Section 145 of the Code and finally by order dated 06.07.2015 had held the land in question to be in the possession of the petitioner and had restrained the opposite parties no. 2 to 8 from interfering in the same. Being aggrieved by such order, the opposite parties no. 2 to 8, moved in Criminal Revision



No. 2 of 2016, which has been decided in their favour by the impugned order.

4. Learned counsel for the petitioner submitted that after having bought the land in question in the year 1991, the petitioner had filed a petition under Section 144 of the Code against the father of opposite parties no. 2 to 8, which ultimately was decided in favour of the petitioner holding that the land was in his possession. Based on the same, it was submitted, the petitioner also got the land mutated in his name. Learned counsel submitted that thereafter, the father of the opposite parties no. 2 to 8 again moved before the authorities under Section 145 of the Code which resulted in an order dated 06.07.2015 in favour of the petitioner and in revision, the same was set aside, which is erroneous, both on facts as well as in law. It was submitted that the only ground on which the Court has interfered is that on the land in question, there was a house situated and only a civil Court of competent Jurisdiction can decide a dispute relating to right and title over such land. It was submitted that the witnesses during examination before the Executive Magistrate have stated that there was only a *Dalan* (hut) over the land and, thus, there is no question of there being any house. It was further submitted that after the initial round of litigation, the father of the opposite parties no. 2 to 8, had



filed Title Suit No. 85 of 1995, with regard to the entire lands including the land in question, which was dismissed for default on 09.05.2017 and till date has neither been restored nor any application has been filed by any party for its restoration.

5. Learned counsel submitted that the reliance by the Court below for interfering in the order of the Magistrate being the order in the case of **Netlat Rai vs. The State of Bihar & Ors.** in Cr. Misc. No. 5026 of 2013, is misplaced as in the said case, the admitted position was that on the land in question, there was house built, whereas in the present case, on the portion of land which the petitioner has bought, there is no house built and even the father of the opposite parties no. 2 to 8, in the title suit had not claimed that on the portion of the land in question his house was built, and out of the total 4 Kathas 11 dhurs, the petitioner was in possession only over the land sold to him which was part of the land on which any house was built. In fact, at this juncture, learned counsel for the opposite parties no. 2 to 8 took the stand that the father of the opposite parties no. 2 to 8, had claimed the entire 4 Kathas 11 dhurs of land to belong to him. This also is an admission on the part of the opposite parties no. 2 to 8 that as far as the claim of the petitioner on only 1 Katha 3 dhurs of land is concerned, on the same there was no house built as no such



pleading has been made in the plaint of the title suit filed by the father of the opposite parties no. 2 to 8.

6. Mr. Jharkhandi Upadhyay, learned APP submitted that the order impugned has been passed based on the order passed by the co-ordinate Bench of this Court in the case of **Netlal Rai** (supra). However, he fairly admitted that the foundational facts of the two cases are different.

7. Learned counsel for the opposite parties no. 2 to 8 submitted that the revisional Court has rightly interfered in the order of the Magistrate on the ground that there was a house over the disputed land which is correct, inasmuch as, the total area of land is 4 kathas 11 dhurs and the opposite parties no. 2 to 8 have their house on it. It was submitted that in such background, the co-ordinate Bench, in the case of **Netlal Rai** (supra), has held that where there is a house situated, the right and title in respect of the land could only be decided by a competent civil Court. He further submitted that the title suit filed was for partition and if a suit for partition filed by any of the coparceners is dismissed for any reason, it does not take away or preclude any other co-sharer from having a cause of action or for moving afresh for partition in an appropriate proceeding before the appropriate forum. However, he could not controvert the fact that Title Suit No. 85 of 1993, filed



by the father of the opposite parties no. 2 to 8 has stood dismissed and not restored till date. Learned counsel further submitted that the demarcation of the land of the petitioner is vague and based on such vague description in sale deed, there cannot be any finding in favour of him.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

9. Before coming to the legal aspect, the Court would first indicate the admitted position. The title suit filed by the father of the opposite parties no. 2 to 8 i.e., Title Suit No. 85 of 1993 before the Munsif at Siwan was not a partition suit and it was *inter alia* for declaration of title and not for demarcating the share. Secondly, from the schedule of the land, part of which is the subject matter of the present case, the total area shown is 4 kathas 11 dhurs with clear cut boundaries. Moreover, a map has also been shown which is part of the plaint of the said title suit. Further, the description of the land given in the title suit filed by the father of the opposite parties no. 2 and 8, being clear, there is also no ambiguity with regard to the actual land over which the Magistrate has found possession of the petitioner. Coming to the litigation between the parties, initially in the year 1991 itself, when the



petitioner had filed a petition against the father of opposite parties no. 2 to 8, before the Magistrate under Section 144 for protecting his possession over the land in question, after hearing the parties, order was passed in favour of the petitioner holding him to be in possession by order dated 02.06.1991 in M. Case No. 580 of 1991. Thereafter, the Revenue Authority in application filed for mutation of the land in question have also allowed the said mutation, by order dated 24.07.1992 in Mutation Case No. 67/92-93, which presupposes that the petitioner was found in valid and legal possession of the land in question. The said order has also not been challenged by any party till date. Later, the father of the opposite parties no. 2 to 8 filed Title Suit No. 85 of 1993, which was dismissed on 09.05.2007 and till date the position remains the same. Subsequently, again the second round started by the father of opposite parties no. 2 to 8 by filing a petition on 02.06.2015 before the Executive Magistrate under Section 145 of the Code, itself was not fit to be entertained, as for a cause of action on which already there is an adjudication by the same Court/Authority, repeated invocation of the authority of the said forum for the same relief, is not permissible in law. Once in the year 1991, the same authority upheld the possession of the petitioner on the same land, the father of the opposite parties no. 2



to 8 neither challenging the same nor objecting to the mutation and thereafter in a suit filed by him for declaration of title, the same being dismissed in the year 2007 and still the situation remaining the same, moving again before the Executive Magistrate directly under Section 145 of the Code was itself an abuse of the process of law. Thus, in that background, when the Executive Magistrate after entertaining the application and going for a full-fledged enquiry where witnesses were produced and examined from both the sides and thereafter taking into consideration their deposition, coming to the finding that the land in question was basically free and open with only a shed for cattle over it, clearly the land cannot be said to be one on which any house is situated. This itself takes away the matter outside the purview of the decision of the coordinate Bench of this Court in **Netlal Rai** (supra)

10. Having gone through the order passed by the Executive Magistrate, the Court finds that the same is based on cogent grounds and the conclusions drawn are logical and emanating from the materials on record and deposition of witnesses before the authority concerned. Moreover, the authority has only upheld the possession of the petitioner on the land in question and has directed the opposite parties no. 2 to 8 not to



interfere in his possession. This is well within the power of the authority under the Code. The authority by not venturing into the area of title and rights of the parties, cannot be said to have transgressed its jurisdiction. Thus, the Court does not find any infirmity in the order of the Magistrate dated 06.07.2015.

11. On the other hand, the order impugned being based only on the ground that because on the land in dispute, there is a house situated, the same having been found to be totally erroneous from the materials on record, such ground/reasoning given by the revisional Court cannot be sustained.

12. Accordingly, for reasons aforesaid, the application is allowed. The order impugned dated 19.12.2017 passed in Criminal Revision No. 02 of 2016 by the Additional Sessions Judge, IV, Siwan stands set aside.

13. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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