

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.413 of 2018

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Ashok Kumar Bhanger Son of Late Puran Mal, Resident of Mohalla-
Shivajee Chauk, Bekapur, Police Station- Kotwali, District- Munger.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Sub Divisional Magistrate, Sadar, Munger.
3. Raj Kishore Prasad, Son of Late Kamali Sao, Resident of Mohalla-
Shivajee Chauk, Bekapur, Police Station- Kotwali, District- Munger.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. T.N. Maitin, Sr. Advocate Mr.Rajeev Kumar Sinha, Advocate
For the State	:	Mr.Sri Shyameshwar Dayal, APP
For the O.P.3	:	None.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 17-02-2020 Heard learned Senior Counsel for the petitioner

and learned counsel or the State. No one appears on behalf

of opposite party no.3.

This Revision Application has been preferred for
setting-aside the order dated 17.03.2018 passed by learned
Sub-Divisional Magistrate, Sadar, Munger in Case No.
821M/16. By the impugned order the learned Sub-
Divisional Magistrate has converted a proceeding under
Section 144 Cr.P.C. in a proceeding under Section 133
Cr.P.C. It has been held that the land in question is a Khas-



Mahal land, and therefore the Circle Officer, Sadar, Munger shall remove the encroachments over the land in dispute.

Learned Senior Counsel for the petitioner submits that while the order of conversion of the proceeding was under challenge in Cr. Misc. No. 16543/2018, the final order has been passed by learned Sub-Divisional Magistrate and therefore the present revision has been preferred against the final order dated 17.03.2018.

It is the case of the petitioner that while he was raising construction over his plot no. 240 which is his self-acquired property, the opposite party no. 3 raised an objection, even though there is no public road or passage in between Plot No. 249 and Plot No. 240. Opposite party no. 3 who claims his possession on Plot No. 249 had filed an application under Section 144 Cr.P.C. alleging that the petitioner is making construction over the 'Rasta' in southern side of his land.

It appears on perusal of the impugned order that after hearing both the parties the learned Sub-Divisional Magistrate took note of the fact that against the order of conversion passed on 10.11.2016 a Revision Application



was preferred before the learned Additional District & Sessions Judge – 2nd Court, Munger giving rise to Revision Case No. 04/2017 which was later on dismissed on 04.12.2017. The Sub-Divisional Magistrate perused the written submissions of the parties and thereafter reached to a conclusion that the land in question is a Khas-Mahal land and because this land belongs to the ‘Bihar Sarkar’ hence any encroachment made thereon by the second party has to be removed.

Pursuant to the order passed by this Court, a counter affidavit has been filed on behalf of opposite party no. 2. It has been sworn by the present Sub-Divisional Magistrate, Munger. At this stage, the opposite party no. 2 called for a report vide his office order no. 2025 dated 03.12.2019 from the Circle Officer, Sadar, Munger. The Circle Officer, Sadar, Munger has vide his order letter no. 1327 dated 06.12.2019 submitted a report as contained in Annexure ‘A’. Perusal of Annexure ‘A’ shows that now it has been reported that Plot No. 240 is not a Khas-Mahal land and from his spot verification as well as report of the Amin it has been found that there is no public road/passage



in the eastern side of Plot No. 240. In the counter affidavit of opposite party no. 2, it is stated that Municipal Plot No. 240 is a private land and not Khas-Mahal land. Regarding Plot No. 249 it is stated that it is a Khas-Mahal land butted and bounded as North – Radha Devi Sitaria, South – Road, East – Ganesh Sharma and West – Jagdish Sharma and thereafter Jamaluddin. The Amin has measured the plot earlier and the report shows that there is no Gali between Municipal Plot No. 240 and Khas-Mahal Plot No. 249.

A counter affidavit has also been filed on behalf opposite party no. 3. In his counter affidavit opposite party no. 3 has claimed that his father had purchased the Plot No. 249 in Khesra No. 282 under an agreement to sell executed by Md. Ishaque, and thereafter father of opposite party no. 3 had been in possession over the said land and the land has been mutated in the name of father of opposite party no. 3. It is the petitioner who had created hurdle in southern passage by which the aforesaid land has been connected from the Shivajee Chowk, Bekapur. He has also stated that the petitioner has filed a suit bearing No. 268/2019 before learned Sub-Judge – II, Munger in respect of the plot in



question.

Having heard learned counsel for the petitioner and the State as also upon taking into consideration the stand of opposite party no. 2 & 3 as disclosed in their counter affidavit, this court finds that so far as Plot No. 240 is concerned, it is not said to be a Khas-Mahal land and it is the stand of opposite party no. 2 that there was no Gali/passage in the eastern boundary of Plot No. 240. If this is the stand of opposite party no.2, in the opinion of this Court, the order passed under Section 133 Cr.P.C. has to be set-aside.

It is evident on a reading of Section 133 Cr.P.C. that the order under the said provision may be made only when the circumstances as enumerated under Clause (a) to (f) or anyone of them is found to be present.

Since the stand of opposite party no. 2 is that in the government records Plot No. 240 is not a Khas-Mahal land rather Plot No. 249 is a Khas-Mahal Land and then there is no Gali/passage in between the two Plots, and, therefore no public way or path may be said to be existing, in the opinion of this Court very invocation of Section 133



suffers from infirmity and beyond jurisdiction.

The impugned order is, thus, set-aside. This
Application is allowed.

(Rajeev Ranjan Prasad, J)

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