

13.09.2021
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sl no. 7

**C.R.R. No. 396 of 2010
(Via video conference)**

In Re : Sk. Manirul Mia & Ors.

.....petitioners

Mr. Rana Mukherjee
Mr. Pravas Bhattacharya

..... for the State

The matter is fixed today for hearing as “Contested Application”.

Mr. Rana Mukherjee Ld A.P.P and Mr. Pravas Bhattacharya, learned advocates appear for the State. Concerned authority is requested to regularize their appointment in the matter.

On call, none appears for the petitioner and opposite party no.2.

Affidavit of service upon the opposite party no. 2 is not found in the case record.

This revisional application is directed against the order/judgment dated 12.1.2010 passed by learned Additional District and Sessions Judge, Contain in Criminal Revision no. 15 of 2009 contending that the same is contrary to the order dated 11.12.2009 passed by the Hon’ble court in CRR 3411 of 2009 and the interim order passed in Title Suit no. 402 of 2009 passed by the Civil Judge, (Jr. Division) 1st court, Contain.

It is the contention of the petitioner in the application is that one Bahaluddin Mia died on 3.4.1967 leaving behind his sons. Said Bahaluddin Mia had another son by the name of Sk. Masleuddin

Mia. The present opposite party no. 2, Sk. Nazrul Islam Mia is the son of Masleuddin Mia. According to Islamic Law of Inherent (Sunni School) heirs of predeceased sons cannot inherit any property or office. It is contended that the opposite party no. 2 Sk. Nazrul Islam Mia harassed and disturbed the possession of the petitioners in the riayati land inherited by them. Due to which they filed Title Suit no. 402 of 2009 before the learned 1st court Civil Judge, (junior division) Contai against the present opposite party no. 2 and others and prayed for ad interim order of injunction against him and interim order of temporary injunction was passed by the learned civil judge on 4.8.2009 restraining the opposite party no. 2 herein from interfering peaceful possession of the plaintiff in T.S no. 402 of 2009 i.e. the petitioners as sebaitis (mutwali) from management of the estate and seba and from changing the nature and character of the suit property. The present petitioners also filed misc case no. 217 of 2009 under section 144 Cr.P.C. before the Executive Magistrate at Contai.

After considering all facts, the Executive Magistrate passed an order on 29.7.2009 directing both the parties to maintain peace in respect of the Tazkhan Moshod-E-Alapir till the shares of the legal heirs are settled by the competent authority. The opposite party no. 2 in this Criminal Revision also initiated a Misc. Case no 199 of 209 under section 144(2) Cr.P.C.in the court of the learned Executive Magistrate at Contai against the present petitioners and procured a favourable order. Finally on 29.7.2009 after considering all materials Executive Magistrate directed the parties to follow the

order passed by the learned Civil judge. By that order, opposite party no. 2 was restrained until further orders. On 5.8.2009 the Executive Magistrate passed an order in Misc Case no. 199 of 2009 where it was observed that as the petitioner Sk. Nazrul Islam Mia (OP no. 2) was not able to produce documentary evidence regarding his legal right at Pirthan and he was restrained until further orders. Accordingly, the order dated 29.7.2009 was modified.

Opposite party no. 2 challenging the legality of the said order dated 5.8.2009 passed in Misc Case no. 199 of 2009 preferred a Criminal Revision no. 15 of 2009 before the learned Additional District and Sessions Judge, Contai where order dated 5.8.2009 passed by the Executive Magistrate in Misc Case no. 199 of 2009 v/s 144(2) of Cr.P.C was set aside.

The present petitioners being severely disturbed in possession of their property, filed CRR 3411 of 2009 before this court wherein the revisional application was disposed of on 11.12.2009 directing the learned court below to hear the Revisional application by preponing the date preferably within 20 days from the date of the order and till disposal of the criminal revision, parties were to abide by the order of the Ld. civil court.

It is the contention of the petitioners that learned Additional Sessions Judge, Contai passed the order dated 12.01.2010 restraining opposite parties from interfering with peaceful possession of the plaintiff as motwali from managing the estate or from changing the nature and character of the schedule land and finally by the Judgement dated 12.1.2010 the order passed by

SDEM, Contai on 5.8.2009, in Misc Case No. 199 of 2009 under section 144 (2) Cr.P.C was set aside. According to the petitioner, this order is contrary to the direction of the Hon'ble court.

I have considered the materials on record and the impugned order as well as the submission made by the prosecution. It appears that the learned Additional District and Sessions Judge while disposing of the criminal revision no. 15 of 2009 did not transgress the direction of this court passed in Criminal Revision No 3411 of 2009. Learned Additional District and Sessions Judge on his appreciation, set aside the impugned order dated 5.8.2009 passed by the Executive Magistrate in Misc Case no. 199 of 2009.

Since the matter in dispute is before the civil court which is vested with the jurisdiction to determine disputes civil in nature, I find no merit in the present criminal revision and no purpose would be sub-served by interfering with the impugned order passed by the Additional District and Sessions Judge, Contai.

Interim order of stay, if any, stands vacated.

Let copy of this order be sent to the Additional District and Sessions Judge, Contai for information.

Urgent photostat certified copy of this order be given to the parties upon compliance of requisite formalities.

(Ananda Kumar Mukherjee, J.)