

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.809 of 2018

Arising Out of PS. Case No.-1679 Year-1998 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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1. Indra Kant Mishra, Son of Late Pandit Ramchandra Mishra
 2. Uday Kant Mishra, Son of Late Pandit Ramchandra Mishra
 3. Ashok Mishra, Son of Late Pandit Ramchandra Mishra. All resident of Village- Laxmipur Mahanth Maniyari, P.S.- Maniyari, District- Muzaffarpur.
- Petitioner

Versus

1. The State of Bihar
 2. Laxman Mishra, Son of Late Yadunandan Mishra.
 3. Bipat Sahani, Son of Late Jai Mangal Sahani
 4. Dukha Sahani, Son of Late Butta Sahani.
 5. Mahesh Mishra, Son of Late Shankar Mishra.
 6. Ganesh Sahani, Son of Late Nirdhan Sahani, All resident of Village- Maniyari, P.S.- Maniyari, District- Muzaffarpur
 7. Dilip Kumar, Son of Late Kamal Prasad, resident of Village- Rupbara, P.S.- Karaja, District- Muzaffarpur, At present Katib at Registry Office, Muzaffarpur, P.S.- Town, District- Muzaffarpur.
- Respondents

Appearance :

For the Petitioner/s : Mr.Ganesh Prasad Singh, Advocate
For the Respondent/s : Mr.Akhileshwar Dayal, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 07-07-2022 Heard learned counsel for the petitioners and Mr. Akhileshwar Dayal, learned A.P.P. for the State.

The petitioners are legal heirs of the deceased-complainant. The allegation is that the accused Laxman Mishra who happened to be the co-sharer of the father of these petitioners sold certain land to the other co-accused by falsely representing that the land belongs to his share.

Learned counsel for the petitioners submits that in fact



Laxman Mishra had sold some of the land earlier which were about 1.69 acre in the year 1969 to Kapildeo Thakur and Janak Nandan Thakur and at the time of said admission of execution of sale deed Laxman Mishra had made a statement before the Sub Registrar that he is selling his entire share of land.

Learned counsel submits that father of these petitioners had purchased those lands from the purchasers of Laxman Mishra but once again Laxman Mishra sold the said land to the co-accused saying that the land of his share.

Learned counsel submits that both the learned trial court as well as the appellate court have failed to appreciate that the complainant had duly proved the necessary ingredients of the offences alleged against Laxman Mishra and the other co-accused. Both the learned courts below have, therefore, committed grave error in dismissing the complaint petition.

On the other hand, this Court has noticed on going through the records particularly the impugned judgment that in course of evidence the complainant brought four witnesses namely Rajbanshi Sahani, Yugal Kishore Thakur, Ram Chandra Mishra and Shiv Kumar Sharma. The defence brought one witness. Ram Chandra Mishra, C.W.3 is the complainant himself who has proved the complaint petition (Exhibit 1). He has stated in his examination in chief that Laxman Mishra had come in collusion



with the other co-accused and sold the share of land which belonged to the complainant to Janak Nandan Thakur, Dukha Sahani and Vipat Sahani, the total area was 15 decimal of Khata No. 1119, Khesra No. 3374. One Mahesh Mishra stood as a witness on the sale deed and Ganesh Sahani was identifier. The allegation is that Laxman Mishra wrongly and with an intention to play fraud upon the complainant falsely deposed before the Assistant Registrar. In his cross-examination, C.W.3 stated that a partition suit was going on between the two brothers. He claimed that the disputed land is his ancestral land but there was no deed of partition of the said land. He has made other claims with respect to the land and allegations against his brother Laxman Mishra. C.W.2 has stated that complainant and his brother Laxman Mishra had partitioned and were living separately. He further deposed that Laxman Mishra had sold his share of land to Janak Nandan Thakur and Kpildeo Thakur and left the village. This witness was unable to say as to whose land he has sold to Dukha Sahani and others. He claimed that when the complainant took out the copy of the sale deed then he came to know that the accused persons had conspired to get executed the sale deed in respect of the land of Ram Chandra Mishra (the complainant). This witness, however, says that he had not seen any paper from which it may be clear that Laxman Mishra had sold his entire share of property. He was



also not aware of the total land which Laxman Mishra had sold to Dukha Sahani and Vipat Sahani. This witness further stated that no partition had taken place in his presence between the two brothers. C.W.3 has stated that oral partition had taken place between the two brothers about 30 years ago but he cannot say that which land was allotted in the share of whom. He was also not aware as to in respect of which land the sale deed has been executed. C.W. 3 is only a formal witness.

This Court has perused the discussions made in the trial court's judgment and the appellate court's judgment. The trial court has rightly come to a conclusion that the allegations made in the complaint petition cannot be proved until the title of the land belonging to the complainant gets adjudicated. Such matters are not within the jurisdiction of a criminal court.

In the opinion of this Court, the learned trial court as well as the appellate court have not committed any error. There is no reason to interfere with the impugned judgment.

The revision application is, thus, dismissed.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

