

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.992 of 2018

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

Dr. Rameshwar Choubey S/o Late Baleshwar Choubey, resident of Village + P.O. Barishwan, P.S. Shahpur, District Bhojpur Arrah, present address residing at Choubey Clinic, Maula Bagh Arrah, P.S. Arrah, District Bhojpur at Arrah.

... .. Petitioner

Versus

1. The State of Bihar
2. The Secretary, Department of Revenue, Bihar, Patna.
3. The Collector, Bhojpur at Arrah.
4. The Sub Divisional Magistrate, Jagdishpur, P.O. P.S.- Jagdishpur, District- Bhojpur at Arrah.
5. The Circle Officer, Shahpur, Anchal- Shahpur, District- Bhojpur at Arrah.
6. Chandrama Yadav
7. Barmeshwar Yadav
All S/o Satram Yadav, resident of Village- Barishwan, P.S. Shahpur, District Bhojpur at Arrah.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Amit Shrivastava, Sr. Advocate Mr. Sanjay Kumar, Advocate Mr. Girish Pandey, Advocate
For the State	:	Mr. Uday Pratap Singh, APP
For the O.P. No. 6 & 7	:	Mr. Manoj Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 01-09-2022

Mr. Amit Shrivastava, learned senior counsel assisted by Mr. Sanjay Kumar, learned Advocate appears for the petitioner whereas Mr. Manoj Kumar Singh, learned Advocate represents the opposite party no. 6 & 7 as also Mr. Uday Pratap Singh, learned A.P.P. represents the State.

Learned senior counsel for the petitioner submits that From Annexure P/1, it would appear that the grand-father of this



petitioner and father of opposite party no. 6 & 7 had entered into a settlement whereunder they had agreed that a portion of the land in question shall be used as 'Rasta'. 62 years thereafter the father of opposite party no. 6 & 7 raised a dispute. He constructed a platform (Chabutara) obstructing the 'Rasta' that led to the present dispute.

It is submitted that when the matter was pending before the Sub-Divisional Magistrate, Jagdishpur, Bhojpur an inspection was carried out by the Circle Officer, Shahpur who submitted a report saying that Satram Yadav (father of O.P. Nos. 6, 7 & 8) had with an intention to connect plot no. 2448 and 2449 constructed a four feet high concrete Chabutara. In his report, he submitted that earlier it was a six feet wide Gali and there was also a drainage earlier. Plot no. 2448 is recorded in Survey Khatihan as Gair Majarua Malik but the opposite party is claiming his possession over plot no. 2449 also and for the same he has filed a title suit in the civil court. The Circle Officer reported that Plot No. 2449 is a government land.

After hearing learned counsel for the parties and upon perusal of the said report of the Circle Officer, the Sub-Divisional Magistrate directed the Circle Officer to remove the unauthorized constructions (Annexure P/9).



Learned senior counsel further submits that the said order (Annexure P/9) was challenged in revision before the learned 6th Additional District & Sessions Judge, Bhojpur, Ara who has allowed the revision application.

Attention of this Court has been drawn towards the finding recorded by the learned Additional District & Sessions Judge, Bhojpur in the order dated 26.07.2018. The learned court has recorded that house of the revisionist Chandrama Yadav is situated on plot no. 2448 whereas plot no. 2449 has been entered as government land in the survey Khatihan but on that also Chandrama Yadav (O.P. No. 6) is in possession. After holding that O.P. No. 6 is in possession over both the piece of land, the learned court held that there is no justification on the part of this petitioner in using of that land. Submission is that the learned District & Sessions Judge, Bhojpur at Ara has apparently exceeded his jurisdiction and committed a grave error by declaring the possession of the O.P. No. 6 on the land in question.

This Court has been informed that in the Court of learned S.D.M. Jagdishpur as well as in the court of learned Additional District & Sessions Judge, Bhojpur, Ara, O.P. No. 8 & 9 were not party, therefore, learned counsel for the petitioner



would expunge their names from the records.

As prayed, this Court has allowed learned counsel for the petitioner to expunge the name of opposite party no. 8 & 9 at his own risk.

Learned counsel for the O.P. No. 6 & 7 has opposed this application. Learned counsel submits that the O.P. No. 6 is in possession of the land bearing plot no. 2449 and Title Suit bearing No. 1021/2013 is also pending at his instance. It is, thus, his submission that the learned 6th Additional District & Sessions Judge, Bhojpur at Ara has not committed any error in declaring the possession of the O.P. No. 6 over the plot in question.

Having heard learned senior counsel for the petitioner and learned counsel for the O.P. Nos. 6 & 7 and taking into consideration the materials available on record, this Court finds that in this case an application under Section 147 Cr.P.C. was filed by this petitioner in the court of learned Sub-Divisional Magistrate, Jagdishpur alleging therein that the O.P. Nos. 6 & 7 are interfering with his right of user of the land in question bearing Plot No. 2449 as 'Rasta'. They were also interfering with the drainage which was existing on the said land. It was alleged that O.P. Nos. 6 & 7, in order to connect Plot No. 2448



and 2449 have done unauthorized construction over Plot No. 2449. The Sub-Divisional Magistrate, Jagdishpur got conducted a local inquiry by deputing the Circle Officer, Shahpur and the report of the Circle Officer has been duly discussed in the order as contained in Annexure P/9. O.P. No. 6 & 7 do not deny that they have constructed a 'Chabutara' on Plot No. 2449. It is also not denied that till date Plot No. 2449 is recorded as Bihar government's land in the Khatihan. No doubt a suit has been filed by the O.P. No. 6 which is said to be pending in the learned court below but mere pendency of the said suit would not confer any right upon the O.P. No. 6 & 7 to claim their right, title and possession over Plot No. 2449.

This Court finds that the Sub-Divisional Magistrate, Jagdishpur has acted perfectly in accordance with the scheme of Section 147 & 148 Cr.P.C. Under sub-section (3) of Section 147 Cr.P.C., it is duly provided that:

"If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section (1) of the report of a police officer or other information leading to the



institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.”

To this Court, it appears that the Additional District & Sessions Judge, Bhojpur at Ara has completely erred in declaring the possession of the O.P. Nos. 6 & 7 on the land bearing Plot No. 2449 which is admittedly recorded in the name of government of Bihar in the Khatihan. The learned court could not appreciate that during pendency of Title Suit No. 1021/2013 no such finding should have been recorded by the said court while exercising his revisional jurisdiction against Annexure P/9. The Court has, therefore, definitely exceeded his jurisdiction and committed an error.

This Court, therefore, sets-aside the impugned order dated 26.07.2018 passed by learned Additional District & Sessions Judge - 6th Court, Bhojpur at Ara in Criminal Revision No. 68/2018 and affirms the order passed by the Sub-Divisional Magistrate, Jagdishpur (Annexure P/9). The Circle Officer, Shahpur shall ensure that the order as contained in Annexure P/9 is given effect to and no obstruction be raised on the said land.

Let it be made clear that any observation of this Court in the present case would not confer any advantage or



disadvantage to either of the parties in the pending suit and the same will be considered on it's own merit.

This Revision Application is allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.09.2022
Transmission Date	

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'.

