

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15723 of 2023

Arising Out of PS. Case No.-4 Year-2022 Thana- RIVILGANJ District- Saran

1. Ram Bachan Tiwari Son Of Late Yugal Kishore Tiwari Resident Of Village - Jigna Tiwari Tola, P.O. And P.S.- Rivilganj, District - Saran At Chapra. Presently Residing At H- No.- 47, Jai Guru Colony, Jamshedpur, Near J.P.S. School, New Baridih Colony, P.S.- Sidhgaro, District - East Singhbhum, Jharkhand.
2. Irfan Alam @ Irfan Son Of Late Azizul Haque Resident Of Mohalla - Abdul Sakur Colony Brahmpur, Post And P.S.- Bhagwan Bazar, District - Saran At Chapra. Presently At I.B. 1/4 Salt Lake City, Sector- 3, I.B., Bidhan Nagar, M. Bidhan Nagar, I.B. Market North, P.S.- Bidhan Nagar, District - 24 Pragana, West Bengal.
3. Narendra Kumar Tiwari Son Of Late Nag Narayan Tiwari Resident Of Village - Jigna Tiwari Tola, P.S.- Rivilganj, District - Saran At Chapra
4. Chandrama Ram Son Of Late Asharfi Ram Resident Of Village - Jigna Tiwari Tola, P.S.- Rivilganj, District - Saran At Chapra

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ramendra Kumar Tiwari S/O- Ram Narayan Tiwari R/O Village- Jigna Tiwari Tola, P.S.- Rivilganj, District- Saran At Chhapra

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Jeetendra Narayan, Advocate
For the Opposite Party/s : Mr.Rajendra Singh, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 25-07-2023 Heard learned counsel for the petitioners and learned
APP for the State and learned counsel for Opposite Party No.2.

2. This application has been filed for quashing of
F.I.R vide Rivilganj P.S. Case No. 04 of 2022 registered for the
offences under Sections 406, 467, 468, 471 read with Section 34
of the Indian Penal Code.

3. It is alleged that Rambachan Tiwari (Petitioner No.



1) son of late Yugul Kishore Tiwari sold the land of the informant's share to Irfan Alam (Petitioner No. 2) by executing wrong sale deed.

4. Learned counsel for the petitioners has submitted that a partition suit has been filed between the members of joint family property vide Partition Suit No. 289 of 2010. He has further submitted that the parties have partitioned orally and they enjoying their shares since long. He has further submitted that this case has been filed only to pressurize the petitioners.

5. Learned counsel for the Opposite Party No. 2 has submitted that though partition suit has been filed by the petitioner but Opposite Party No. 2 is not a party in the partition suit. She has further submitted that both the parties are agnates but they have not been made party in the partition suit, therefore, the entire sale of land by the petitioners is illegal.

6. I have heard both the parties and also perused the materials available on record. The questions raised by petitioners and Opposite Party No. 2 are basically of civil dispute and the Criminal Courts cannot decide the same.

7. A partition suit is pending for the properties in which the informant can file an application under order 1 Rule 10 for addition of party and thereafter, file an injunction petition



in the court below. The short cut taken by Opposite Party No. 2 by filing a criminal case against the petitioners seems to be a *mala fide* prosecution. In view of the law laid down by Hon'ble Supreme Court in case of ***State of Haryana Vs. Ch. Bhajan Lal & Others*** reported in ***AIR 1992 SC 604***, this application is allowed. The F.I.R vide Rivilganj P.S. Case No. 04 of 2022 registered for the offences under Sections 406, 467, 468, 471 read with Section 34 of the Indian Penal Code is hereby quashed.

8. The Opposite Party No. 2 is given liberty to file an application under order 1 Rule 10 C.P.C and an application for injunction in Partition Suit No. 289 of 2010 in the court below.

9. If such applications are filed by the Opposite Party No. 2, the same shall be decided by the court below within a month of its filing.

10. With the aforesaid observation and direction, this application is allowed and the F.I.R vide Rivilganj P.S. Case No. 04 of 2022 is hereby quashed in the interest of justice.

(Sandeep Kumar, J)

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