

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33906 of 2015

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

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1. Anirudh Dubey
 2. Kameshwar Dubey
 3. Sidheshwar Dubey
All sons of Late Ram Kawal Dubey,
 4. Sumitra Devi, Daughter of Ram Kawal Dubey, all residents of Village-
Karmani, P.O. Bhelari Purwari, P.S.- Natwar, District- Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sita Devi, daughter of Ram Yash Dubey, wife of Ramyashray Tiwari,
residing at Patel Nagar Colony, P.O.- Bhanwanathpur, P.S.- Lanka, District-
Varanashi.
3. Punita Devi, daughter of Late Ram Yash Dubey, wife of Ram Surat Pandey,
resident of Village- Nado, P.O.- Khanath, P.S.- Karaghar, District- Rohtas.
4. Sangita Devi @ Sawita Devi, daughter of Late Ram Yash Dubey, wife of
Dasrath Mishra, resident of Village- Inrath, P.O.- Kastar, P.S.- Bikramganj,
District- Rohtas.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Ms.Isha Ranjan Pandey, Advocate Mrs. Usha Kumari, Advocate
For the Opposite Party/s	:	Mr.Nand Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 23-02-2023 Heard Ms. Isha Ranjan Pandey and Mrs. Usha
Kumari, learned counsels for the petitioners and the State.

The present petition has been filed for quashing of the
order dated 01.11.2013 passed by learned Sub-Divisional
Magistrate, Bikramganj in Case No. 1326 of 1999 by which
despite order dated 13.05.2011 passed by this Hon'ble Court in
Cr. Misc. No. 26311 of 2008 by the learned SDM, Bikramganj



has rejected the prayer of the petitioners on the ground that already order has been passed (which was subject matter of Cr. Misc. No. 26311 of 2008).

The matrix of facts giving rise to the present petition is/are relating to a piece of land which was gifted to Akshayabar Dubey by his father-in-law, Lakhraj Devi, being his only daughter. He in turn sold 1.20 acres of land. While he exchanged 0.49 (49 decimal) and thereafter land measuring 12.35 acres of Khata No. 1 measuring about 2.37 acres of land was purchased by him and 2.23 acres of land of Khata No. 1 were also received by him in exchange. Subsequently, his name was also mutated in Government '*sirista*' and was paying rent to the Government.

As Akshyabar Dubey was issueless, he took up the son of Ram Kawal Dubey, son of his cousin brother Ramayan Dubey and started treating him as his son. Although, the land remained in the name of Akshyabar Dubey, he declared that Ram Kawal Dubey will inherit his entire property and accordingly, he was also put in possession of it.

The dispute arose after the death of Akshyabar Dubey when Ram Kawal Dubey filed petition before the Circle Officer, Dinara for mutation of his name in place of Akshyabar Dubey.



Accordingly, his name was mutated and Ram Kawal Dubey started depositing the '*Malguzari*'.

In the meantime, the consolidation proceeding started and thereafter, several cases came to be filed before the Consolidation Authorities.

The uncle of the petitioner, Ram Jas Dubey (brother of Ram Kawal Dubey) never objected to either the mutation or the name of the petitioner in consolidation proceeding. However when his daughters- opposite party nos. 3 and 4 were married, the dispute arose by their husband and accordingly, the proceedings started which finally resulted into the passing of the order dated 31.08.2007 by the Sub-Divisional Officer, Bikramganj in which the Section 145 of Cr.P.C. proceeding was recorded in favour of the opposite party.

Aggrieved by that, Ram Kawal Dubey preferred Revision petition no. 209 of 2007 which was taken up vide an order dated 21.05.2008 and the revision petition came to be dismissed. Thereafter Cr. Misc. No. 26311 of 2008 was preferred.

During the pendency of the Cr. Misc. No. 26311 of 2008, Ram Kawal Dubey died and was substituted by his son, Sidheshwar Dubey and others (petitioners herein).



The Patna High Court took up the matter on 13.05.2011 and considering that the sole petitioner has died and the son of the petitioner wants incorporation of his name substituted him and on the submission put forward by the son of the petitioner that he was not party in Court below and the proceeding was concluded without hearing him, the Court directed that he should get an opportunity to be heard afresh.

The matter was accordingly taken up by the learned S.D.M, Bikramganj vide case No. 1326 of 1999 and vide a reasoned order dated 01.11.2013, the learned S.D.M, Bikramganj held as follows:

“4. In order to appreciate the issue in hand the brief history of the matter needs to be looked into. The present proceeding U/s 145 Cr.P.C. was drawn upon the petition of Shri Ramyash Dubey and on the basis of police report submitted by Natwar P.S. Both the parties contested the matter and led their respective evidence. Shri Sidheshwar Dube, son of Shri Ram Kewal Dubey, was called as a witness before this Court to dispose on behalf of the respondent. His detailed statement was duly recorded by this court as witness no. 5.

Thereafter the case was finally decided vide order dated 31.08.2007 wherein the possession of the respective parties was confirmed.



Thereafter, Shri RaM Kewal Dubey, assailed the order dated 31.05.2007 before the learned District and Session Court vide Revision Petition NO. 209 of 2007. Which revision petition was renumbered as o2 of 2008. The Revision Petition after hearing both the parties was finally decided vide order dated 21.05.2008. The order dated 31.08.2007 was therefore confirmed by the order of the learned District and Sessions Court passed in the revision petition. Impugning the order dated 21.05.2008 Shri Ram Kewal Dubey preferred criminal misc. petition before the Hon'ble High Court, Patna. Hon'ble High Court vide its order dated 13.05.2011 disposed of the Criminal Misc. Petition which reads under :-

“ It has been submitted that the sole petitioner is dead and therefore, the son of the petitioner be substituted in this Misc. Application. On a definite query, this Court has informed that the son of the petitioner was not a party in the Court below and the proceedings were concluded without having heard him. Now, since he claims to be an interested party, the property being ancestrar property, in my view he should get an opportunity to be heard afresh. If so advised, the son of the petitioner may approach the Court below for redressal of his grievance.

With this observation, the



application is disposed off.”

The learned S.D.M., Bikramganj further held in paragraph 7 as follows:-

“7. In this case the proceedings under Section 145 Criminal procedure Code had resulted in a concluded order dated 31.08.2007. Admittedly, the property being an ancestral property was in the hands of Shri Ram Kawal Dubey when the present proceedings were initiated. The applicant did not have any interest in the property when the proceedings were initiated in the year 1999 and further admittedly the interest of the property was sell protected and represented by the respondent Shri Ram Kawal Dubey who claimed to be the lawful OWNER IN POSSESSION. The applicants were therefore knowingly and correctly not made a necessary party in the present proceedings by Shri Ram Kawal Dubey Shri Sidheshwar Dubey too at that stage did not prefer an application to be impleaded as party in proceedings. It was only after the death of Shri Ram Kawal Dubey, the property developed upon the applicants and he developed interest in the property. After the death of Shri Ram Kawal Dubey admittedly no fresh dispute have arisen leading to apprehension of breach of peace. This has been admitted by the applicant herein i.e. Sidheshwar Dubey and others, in the written statement filed afresh. The issues have been duly addressed and attained finality in order dated



31.08.2007 and 21.05.2008.”

Accordingly, it came to a conclusion and recorded his finding at paragraph 10:-

“10. By way of present application the application intends to reopen the case and ultimately review the order 31.08.2007. In my considered view, this Court does not have power to review the final order passed specifically when the Court has delivered the final judgment and which has been confirmed vide order dated 21.05.2008 by the Sessions Court. Moreover, the proceedings before the Civil Court is pending adjudication, the applicants can legitimately raised their contention before the said Court. Further, it has been admitted by the applicants i.e. Sidheshwar Dubey & others in their written statements that there is no apprehension of breach of peace over the land in dispute.”

Thus, the petition preferred by the petitioners herein was rejected.

Aggrieved the present petition.

Ms. Isha Ranjan Pandey and Mrs. Usha Kumari jointly submitted that it is an admitted fact that Raj Kawal Dubey inherited the property of Akshyabar Dubey, got the land in question mutated in his favour, even in consolidation proceeding no one made any opposition to his applications, he



also took Bank loan in 1996 from State Bank Of India, Bikramganj branch for purchase of tractor in which Ram Jas Dubey swore affidavit in his favour and when he got his two daughters married on the provocation of their respective husbands, Ram Jash Dubey started fighting for his share in the land.

According to them, they should have been heard although the learned counsels conceded that contrary to the submission made before the Patna High Court in Cr. Misc. No. 26311 of 2008 that the proceeding was concluded without hearing him, from paragraph 4 of the order in question, it has been recorded that Sidheshwar Dubey was called as a witness to depose and his statement was duly recorded as witness no. 5 and only thereafter, the case was finally decided on 31.08.2007.

This Court has also gone through the facts of the case, the orders in question as also the submissions put forward by the learned counsels and find force in the observation of the learned Sub Divisional Magistrate, Bikramganj that two Title Suit nos. i.e. 1/2010 and Title Suit No. 46 of 2012 are already there and the respective parties will get all the opportunities to present their respective views in the said suits pending before the Civil Court.



So far as the present petition is concerned, taking into account all the aforesaid facts, this Court does not find any error in the order passed by learned Sub Divisional Magistrate, Bikramganj. Accordingly, the petition stands dismissed.

Before parting, this Court would like to put on record its word of appreciation for Mrs. Usha Kumari and Ms. Isha Ranjan Pandey, learned counsels for the petitioners for the proper assistance, they rendered to the Court.

(Rajiv Roy, J)

Jagdish/Neha/-

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