

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1064 of 2021

Arising Out of PS. Case No.- Year-0 Thana- District- Sheikhpura

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RANJAN KUMAR SON OF LATE TARKESHWAR MAHTO RESIDENT
OF VILLAGE- JAMALPUR BIGHA, POLICE STATION- SHEIKHPURA,
DISTRICT- SHEIKHPURA

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH PRINCIPAL SECRETARY,
REVENUE DEPT., BIHAR, PATNA BIHAR
2. THE DISTRICT MAGISTRATE, SHEIKHPURA BIHAR
3. THE SUPERINTENDENT OF POLICE, SHEIKHPURA BIHAR
4. THE SUB-DIVISIONAL OFFICER, SHEIKHPURA BIHAR
5. THE CIRCLE OFFICER, SHEIKHPURA BIHAR
6. THE OFFICER IN CHARGE, SHEIKHPURA POLICE STATION,
SHEIKHPURA BIHAR
7. HARGOURI MAHTO S/O LATE MUSHHARI MAHTO RESIDENT OF
JAMALPUR, WARD NO. 1, P.O. AND POLICE STATION-
SHEIKHPURA, DISTRICT- SHEIKHPURA

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nagendra Debey Mr. Ratnakar Ambastha
For the State	:	Mr. Arun Kumar Bhagat, AC to AAG 12
For Respondent No. 7	:	Mr. Sudhir Kumar

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 07-10-2023

The petitioner, by way of present writ application, has challenged the order, dated 09.07.2021, passed by the Sub Divisional Magistrate, Sheikhpura, by which in the light of the order, dated 28.11.2016, passed in Case No. 832M of 2013, deputed the Circle Officer, Sheikhpura, as Magistrate, to ensure

law and order situation, at the time of construction of boundary wall upon the subject land by the respondent no. 7, namely, Hargouri Mahto. The Station House Officer, Sheikhpura Police Station, was also directed to depute the police force in order to provide necessary help for construction of the boundary wall.

2. The relevant facts, culled out from the statement made on behalf of the parties, is that the disputed land was recorded in the name of one Tuna Mahto, having a total area of 85 decimals, situated at Village Jamalpur, Thana No. 167, Khata No. 13, Khesra No. 159. The only son of Tuna Mahto, namely, Ganauri Mahto, sold the land in question to one Barkatullah on 25.03.1932. On 01.03.1946 and 12.03.1948, said Barkatullah sold the entire land of 85 decimals to one Somari Devi, who happened to be the maternal grand mother of respondent no. 7. On 25.06.1954, Somari Devi sold 16.5 decimals out of the 85 decimals to one Budhan Mahto, who was the son of Ganauri Mahto. Somari Devi was thus left with only 68.5 decimals of land. On 14.07.1964, Somari Devi executed a registered deed of gift for 68 decimals of land in favour of her only daughter, namely, Parwati Devi, the mother of respondent no. 7. On 12.02.1981, Budhan Mahto sold 7 decimals of land out of 16.5 decimals of land to Naresh Prasad. Thereafter, Budhan Mahto was left with only 9.5 decimals of land,

but as per the case of the parties, he was in possession of 10 decimals of land.

3. The petitioner claims the entire land as his ancestral property; whereas the respondent no. 7 claims title and possession through his mother to the extent of 68 decimals of land, gifted to her mother by her maternal grandmother.

4. Budhan Mahto is the grandfather of the petitioner. In the year 2010, Case No. 542M of 2010, under Section 144 of the Code of Criminal Procedure, 1973, was initiated by the sons of Budhan Mahto, in which they lost and a title suit, bearing Title Suit No. 21 of 2010, was thereafter filed, which also got dismissed. Aggrieved by the dismissal of Title Suit No. 21 of 2010, they filed Title Appeal No. 06 of 2012, which, too, was dismissed.

5. Again, one Tarkeshwar Mahto, father of the petitioner, filed Case No. 832M of 2013, under Section 144 of the Code of Criminal Procedure, 1973, claiming himself to be the khatiyani raiyat of the land in question and possession over the same through his ancestors.

6. After appearance of the second party in the case, the proceeding was converted into a proceeding under Section 145 of the Code of Criminal Procedure, 1973 and finally, the same was decided on 28.11.2016 by Sub Divisional Magistrate, Sheikhpura

in favour of respondent no. 7, wherein it has been held that 68 decimals of land is in possession of respondent no. 7. The petitioner was directed not to disturb the possession of respondent no. 7 until this order is set aside by the competent court.

7. The said order of the Sub Divisional Magistrate, Sheikhpura, was challenged by the petitioner by filing Criminal Revision No. 41 of 2019, before the Sessions Judge, Sheikhpura. During the pendency of the criminal revision application, the respondent no. 7 filed Title Suit No. 51 of 2020 on 19.08.2020, which was not for declaration of title and possession over the entire disputed land; rather, for declaration of sale deed pertaining to Schedule No. 4 of the plaint executed by the defendants, including the petitioner, as *void ab initio*, having total area of 9.5 decimals of land and for declaring the title and possession upon Schedule 4 land.

8. Criminal Revision No. 41 of 2019 was heard and dismissed by 3rd Additional Sessions Judge, Sheikhpura, vide order, dated 26.11.2020, after arriving at the finding that there is no irregularity or illegality in the order passed by the Sub Divisional Magistrate, Sheikhpura and on fair assessment of the evidence adduced, the learned Magistrate has found the possession of the second party, i.e. the respondent no. 7 herein. The learned 3rd

Additional Sessions Judge, Sheikhpura, has also recorded in his order that no order is being passed restraining the execution of the order, dated 28.11.2016, passed by the Sub Divisional Magistrate, Sheikhpura, in Case No. 832M of 2013.

9. The criminal miscellaneous application preferred by the petitioner before this Court against the order dated 26.11.2020 passed by the 3rd Additional Sessions Judge, Sheikhpura, bearing Criminal Misc. No. 15978 of 2021 has been dismissed as withdrawn by this Court on 21.04.2022.

10. Learned Counsel for the petitioner submits that the petitioner is in continuous physical possession over the land in dispute, being his khatiyani land. The Sub Divisional Magistrate, Sheikhpura, completely misconceived himself and by his imaginary finding without conducting any local enquiry in the proceeding under Section 145 of the Code of Criminal Procedure, 1973, passed the order on 28.11.2016 in favour of respondent no. 7. The order passed by the Sub Divisional Magistrate, Sheikhpura on 28.11.2016 is sought to be implemented by the impugned order, dated 09.07.2021, after about five years. He further submits that sub-clause (4) of Section 145 of the Code of Criminal Procedure, 1973 does not allow the Magistrate to give effect to its order after expiry of two months and, accordingly, the implementation of the

order passed five years back by the Sub Divisional Magistrate, Sheikhpura, by way of impugned order is untenable in the eyes of law. He also submits that Title Suit No. 51 of 2020 filed by the respondent no. 7 is pending and the petitioner has also filed Title Suit No. 160 of 2021. Hence, the proceeding, under Section 145 of the Code of Criminal Procedure, 1973, lost its force and the impugned order passed for giving effect to the order passed in the proceeding under Section 145 of the Code of Criminal Procedure, 1973 is also unsustainable in law.

11. Learned Counsel relies upon the decision of the Supreme Court, rendered in the case of **Amresh Tiwary v. Lalta Prasad Dubey and Another (AIR 2000 SC 1504)**.

12. On the other hand, learned Counsel for the respondent no. 7 argued that the impugned order, dated 09.07.2021 is not for putting respondent no. 7 back in possession inasmuch as respondent no. 7 is already in possession over the subject land. The Sub Divisional Magistrate, Sheikhpura, in the proceeding under Section 145 of the Code of Criminal Procedure, 1973 passed a detailed order on 28.11.2016, in Case No. 832M of 2013, declaring the possession of respondent no. 7 over the land pertaining to Khata No. 13 Khesra No. 159, having an area of 68 decimals out of 85 decimals of land. The revision preferred by the petitioner

against the order, dated 28.11.2016, has also got dismissed on 26.11.2020 and the criminal misc. application filed before this Court by the petitioner against the said order has been dismissed as withdrawn. In spite of the order passed in favour of the respondent no. 7 regarding his possession over the land in question, the petitioner and others started disturbing his possession and also started selling some portion of Schedule 4 land of the plaintiff, due to which respondent no. 7 filed Title Suit No. 51 of 2020, not for declaring title and possession over the entire land; rather, for declaration of sale deed executed by the defendants, including the petitioner, as *void ab initio* and for restraining them from interfering in the possession on the basis of the sale deeds.

13. I have heard learned Counsel for the parties concerned and have perused the materials available on record.

14. From the order passed by the Sub Divisional Magistrate, Sheikhpura, in a proceeding under Section 145 of the Code of Criminal Procedure, 1973, it appears that the Sub Divisional Magistrate has declared the possession of respondent no. 7 upon the land, having 68 decimals, which is the subject matter of dispute between the parties. It is the case of the respondent no. 7 that after final order having been passed by Sub Divisional Magistrate, in the proceeding under Section 145 of the

Code of Criminal Procedure, 1973, the petitioner and others started creating disturbance in the peaceful possession of respondent no. 7, which required him to construct the boundary wall upon the land in question. The Sub Divisional Magistrate, Sheikhpura, by the impugned order, dated 09.07.2021, has only directed the Circle Officer (Executive Magistrate) and the police to ensure the law and order situation at the site during course of construction of boundary wall.

15. It is an admitted position that the revision as well as challenge up to the High Court by the petitioner against the order passed by the Sub Divisional Magistrate got dismissed, meaning thereby that the order of the Sub Divisional Magistrate, attained finality up to the High Court. The petitioner has filed title suit after dismissal of his criminal revision on 26.11.2020 by the learned 3rd Additional Sessions judge, Sheikhpura, arising out of the order, dated 28.11.2016 passed by the Sub Divisional Magistrate in a proceeding under Section 145 of the Code of Criminal Procedure, 1973.

16. Admittedly, the civil suit has been filed by the petitioner on 21.12.2021 after final order passed in the proceeding under Section 145 of the Code of Criminal Procedure, 1973 and its confirmation by the learned Sessions Judge.

17. It is not the case of the petitioner that the civil suit was filed before initiation of the proceeding under Section 145 of the Code of Criminal Procedure, 1973. In the civil suit, the petitioner has sought for a declaration that he has got perfect right and title over the suit land on the basis of long standing possession from the time of his ancestor, Tuna Mahto, and further to declare the sale deed, dated 25.03.1932, executed by Ganauri Mahto as forged and inoperative.

18. Accordingly, in the facts of the present case, the decision relied upon by the petitioner is not applicable.

19. Learned Counsel for the respondent no. 7 has argued that the suit filed by him is not for declaration of title and possession over the suit land; rather, the same has been filed for declaring the sale deeds pertaining to Schedule 4 property of the plaint as *void ab initio*. The possession of the respondent no. 7 has already been declared by the Sub Divisional Magistrate, Sheikhpura, in the proceeding under Section 145 of the Code of Criminal Procedure, 1973.

20. The life of the order passed under Section 145 of the Code of Criminal Procedure, 1973 is conterminous with the passing of the decree by a Civil Court. Reliance, in this regard, has been placed by him, on paragraph 19 of the decision of the

Supreme Court, in the case of **Ram Pukar Singh and Others v. Sita Ram Mahton and Others (AIR 1973 PAT 310)**, which reads as under:

“19. Now I proceed to consider point No. (5). Under this point learned counsel for the appellants has made a grievance that the lower appellate Court had treated the order passed in the proceedings under Sections 144 and 145 of the Code of Criminal Procedure as substantive evidence. He referred to paragraphs 29 and 30 of its judgment wherein it observed that the findings of the officers in Ss. 144 and 145 proceedings could not be taken to be a decision on the question of title to the parties and their right to possess but nevertheless their decision had got evidentiary value on point of possession till their decision was reversed by the competent Civil Court in my opinion, the grievance made by the learned counsel is not justified. It has not considered their decision as substantive evidence nor has it used the same nor does it use them as corroboration of the evidence on the record adduced by the defendants. Even in Second Appeal No. 176 of 1967 (Pat) (supra) Mahapatra, J. observed that when there was a finding in regard to the possession in favour of the defendants in the proceeding under Section 145, they could only be deprived of such possession by a clear finding in regard to the title of the plaintiffs. In *Bhinka v. Charan Singh*, (AIR 1959 SC 960). while dealing with the provisions under Section 145(6) of the Cr PC their Lordships observed that the life of the order passed under Section 145 is conterminous with the passing of decree by a Civil Court, and the moment a Civil Court makes an order of eviction., it displaces the order of the Criminal Court. In that view of the matter. I do not find any flaw in the observation of the appellate Court in paragraphs 29 and 30. Therefore, this point also fails.”

21. Upon careful consideration of the argument advanced by the parties and the discussion herein above on the facts as well as on law, I am of the considered view that unless the order passed by the Sub Divisional Magistrate, Sheikhpura, under Section 145 of the Code of Criminal Procedure, 1973, declaring the possession in favour of respondent no. 7 is reversed by a competent civil court, the respondent no. 7 could not be deprived of such declaration regarding his possession over the land.

22. Accordingly, the impugned order, passed by the Sub Divisional Magistrate, Sheikhpura, for securing the property by allowing respondent no. 7 to construct boundary wall does not need any interference by this Court.

23. In the result, this application is dismissed.

24. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	29-08-2023
Uploading Date	07-10-2023
Transmission Date	N/A