

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50801 of 2015

Arising Out of PS. Case No.-1004 Year-2014 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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1. Birendra Kumar Thakur, Son of Late Krishnadeo Thakur.
 2. Mosst. Meera Devi aged about 65 years, Wife of Late Vijay Kumar Thakur.
Both resident of Purani Bazar, P.S. Town and District- Muzaffarpur.

... .. Petitioners

Versus

1. The State of Bihar
2. Smt. Janaki Devi, Wife of Sri Suchindra Sharma, Resident of Village-
Narhar Sarai, P.S.- Karja, District- Muzaffarpur.

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Vikas Mohan, Advocate
For the Opposite Party/s : Mr. Md. Fahimuddin, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 20-09-2023 Heard learned counsel for the petitioners and Mr. Md.
Fahimuddin, learned APP for the State.

2. Despite service of notice on the complainant-opposite party no. 2 and the fact that she has entered appearance in this case, this Court finds that no one appears on behalf of the complainant-opposite party no. 2 to oppose this application.

3. The petitioners in the present case are seeking quashing of the order dated 25.11.2014 in which cognizance has been taken under Sections 420, 465, 471 and 120B of the Indian Penal Code in connection with Trial No. 4908 of 2015 arising out of Complaint Case No. 1004 of 2014 and quash the entire proceeding pending before the learned Judicial Magistrate, 1st



Class, Muzaffarpur.

4. As per the prosecution story, the complainant-opposite party no. 2 filed a complaint petition bearing Complaint Case No. 1004 of 2014 alleging therein that the R.S. Khatiyan of the land bearing Khata No. 1184, Khesra No. 8621 measuring area 125 decimals which is the ancestral property of the petitioners was wrongly prepared in the name of one Mukund Murari Thakur who never came in possession over the land. He also executed a 'LADAVI' in favour of the petitioners on 05.09.2002 stating that the land above-mentioned belongs to one Birendra Kumar Thakur (petitioner no. 1) and Vijay Kumar Thakur (husband of petitioner no. 2). The petitioners sold the land in question to the opposite party no. 2 and in support of their right and title over the land, they made available a copy of the said 'LADAVI' dated 05.09.2002. The opposite party no. 2 paid the entire agreed amount i.e. Rs.8,75,000/- to the petitioners whereafter they executed a sale deed in favour of opposite party no. 2 on 16.12.2011. When the opposite party no. 2 filed an application before the Anchal Officer, Marwan for mutation of the said land in her name, her application was rejected stating therein that the Khatiyan and Jamabandi do not stand in the name of the petitioner.

5. Learned counsel for the petitioners submits that the



land bearing Khata No. 1184, Khesra No. 8621 measuring area 125 decimal is ancestral property of the petitioners who got their share on the basis of partition but due to a wrong entry in the R.S. Khatiyani, the name of one Mukund Murari Thakur was recorded. It is stated that the petitioners when came to know about the said mistake, they requested Mukund Murari Thakur to execute a 'LADAVI' and accordingly Mukund Murari Thakur executed the 'LADAVI' on 05.09.2002 in favour of the petitioners.

6. The case of the petitioners is that the 'LADAVI' was shown to the complainant-opposite party no. 2 prior to execution of the sale deed and she has accepted this fact in her complaint petition. The sale deed was executed on 17.12.2011 whereafter the complainant-opposite party no. 2 filed an application before the Anchal Officer Marwan for mutation but the same was rejected on 19.02.2013 stating therein that Khatiyani and Jamabandi is not standing in the name of the petitioners.

7. It is further stated that the complainant-opposite party no. 2 has filed a title suit bearing Title Suit No. 793 of 2013 seeking a declaration as to her right and title over the land which is pending before the learned Sub-Judge, 1st, Muzaffarpur.

8. It is submitted that the present complaint is in respect of a dispute of purely civil nature and in such



circumstance, continuance of the present proceeding is nothing but an abuse of the process of Court.

9. Learned APP for the State has opposed this application. It is pointed out that in this case the complainant has appeared and has also filed a counter affidavit wherein she has taken a plea that Mukund Murari Thakur whose name appears in the R.S. Khatiyani has alleged that the alleged 'LADAVI' dated 05.09.2002 is a forged, fabricated 'LADAVI', hence, cannot be acted upon. It is, thus, submitted that in view of the opposition of Opposite Party No. 2 in the present case, this application may be dismissed.

10. This Court has considered the submissions and perused the records. On perusal of the complaint petition, it appears that the complainant has stated in the complaint petition that the accused persons-petitioners had made available to her a copy of the 'LADAVI' dated 05.09.2002 which mentioned the fact that the given piece of land had been recorded in the name of Mukund Murari Thakur but the owner of the said land is the husband of Meera Devi, namely, Vijay Kumar Thakur and Birendra Thakur. She claimed that the 'LADAVI' bears the signature of Mukund Murari Thakur. She had purchased the property on the basis of the said 'LADAVI'.

11. The complainant-opposite party no. 2 has already



filed a title suit much before filing of the present complaint petition. A copy of the plaint of the Title Suit No. 793 of 2013 has been brought on record and this Court has gone through the same. In fact, in the suit, the complainant/plaintiff is seeking recovery of possession from the defendants and she has made a statement that the vendor of the plaintiff had put the plaintiff in possession over the said land and she was coming in possession over the land. She has further claimed that on 05.06.2013, in absence of the plaintiff, the defendant no. 3 cultivated the suit land and planted paddy seeds in part of the suit land. The defendant no. 3 firstly assured the plaintiff that he would vacate the possession of the suit land and execute 'LADAVI' in respect of the suit land in favour of the plaintiff but later on defendant no. 3 adopted procrastinate behaviour and backed out from all his previous statements.

12. In the nature of the dispute pending in the title suit, this Court is of the considered opinion that the issue with regard to the 'LADAVI' in question is pending consideration in the title suit from a date much prior to the date of filing of the present complaint.

13. To this Court, therefore, it appears that a purely civil dispute which was pending between the parties before the competent court of law has been given a color of criminal



proceeding at a later stage by filing the private complaint in the court of learned Magistrate.

14. In the case of Inder Mohan Goswami and Another Vs. State of Uttranchal and Others reported in (2007) 12 SCC 1, the Hon'ble Supreme Court has observed as follows:-

“30. The Court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The Court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.”

15. In the given facts and circumstances and in view of the discussions made hereinabove, the impugned order which has been passed in a routine and mechanical manner is hereby set aside and the complaint case as regards the petitioners is quashed.

16. This application stands allowed.

(Rajeev Ranjan Prasad, J)

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