

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.492 of 2017

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

-
-
1. Nawal Kishore Singh and Anr Son of Late Bhukhan Singh.
 2. Hari Mohan Singh, Son of Sri Nawal Kishore Singh, Both Resident of Village Fatehpur, P.S. and Dist.- Sheohar.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Hari Sahay Singh, Son of Late Ramchandra Singh.
3. Radhe Shyam Singh, son of Late Chandra Shekhar Singh. Opposite Party Nos. 2 and 3 resident of Village- Fatehpur, P.S. and Dist.- Sheohar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vaidehi Raman Prasad Singh, Adv.
For the Respondent/s	:	Mr. Jagdhar Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 17-04-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

After service of notices upon O.P. Nos. 2 and 3.

Notices are validly served upon them and O.P. No. 3
has appeared through *vakaltnama*, but today upon repeated
calls, no one appeared on behalf of O.P. No. 3.

Counsel for the petitioner submits that the present Cr.
Revision has been filed against order dated 16.12.2016, passed
by the S.D.M., Sheohar in Case No. 255 of 2011, dismissing the
proceeding under Section 147 of the Cr.P.C., holding that there
is no authoritative and sufficient basis for passing order under

Section 147 of the Cr.P.C.

Counsel for the petitioner submits that the land in dispute is under Khata No. 446, plot no. 2461, with area of 40ft in length and 8ft in width, which was filled-up with old soil and used as *rasta*.

Counsel submits that the surroundings of the said land in dispute has already been described vide order dated 16.12.2016. He submits that the petitioner the opposite parties are agnates and the land belongs to their ancestors. Counsel submits that in the year 1936, partition took place, in which the above said disputed land was left for *ratsa*, for both the parties. Counsel further submits that again in the year 1993, the dispute arouse, in which by consent of the said land was left as *rasta*.

Counsel for the petitioner submits that petitioner is not claiming title on the said land rather he is merely claiming his right to way, as in year 1936 and again in year 1960, it was agreed between the parties that the said land will be used as *rasta* by both the parties. Counsel submits the O.P. is claiming and raising a dispute by virtue of case no. 75/11-12, decided by B.L.D.R. Counsel submits that the decision of B.L.D.R. is barred by *res-judicata* due to the reason that this matter was subject of dispute earlier and resolved in the year 1936 and

1960. He further submits that the Court of S.D.M. has decided, only on the basis of that the land belongs to *raiya* land and the records of right namely Badri Thakur, has not been added as party. Counsel submits that the said alleged Badri Thakur, who alleged to be *raiya* of the land, is not claiming this land and there is no dispute from his side. Counsel for the petitioner submits that if Badri Thakur had come forward, and started disturbing to anyone, matter should have been otherwise, but so far as, case of private respondent no. 2 and 3 are concerned, they have no *locus-standi* to raise dispute and raising the question that Badri Thakur is not added as party.

In this view of the matter, let this Cr. Revision is allowed and the order dated 16.12.2016, passed by the S.D.M., Sheohar in Case No. 255 of 2011, is hereby **set-aside**.

Both the parties and S.D.M. are directed to respect the decision of 1936 and 1960 into the matter and they are also directed to make way free for the use of all the persons.

(Dr. Anshuman, J.)

Ashishsingh/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	