

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23569 of 2019

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

Sabhapati Tiwari, son of Bhuwaneshwar Nath Tiwari, Resident of Village -
Amahi Mishra, P.S.- Bhorey, Distt - Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar
2. Jay Prakash Yadav Son of late Baldeo Yadav Resident of Village - Rampur Kala, P.S.- Bhorey, Distt - Gopalganj.
3. Jaydip Yadav Son of Late Baldeo Yadav Resident of Village - Rampur Kala, P.S.- Bhorey, Distt - Gopalganj.
4. Jayram Yadav Son of late Baldeo Yadav Resident of Village - Rampur Kala, P.S.- Bhorey, Distt - Gopalganj.

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Prince Kumar Mishra, Advocate
For the Opposite Party/s : Mr.Nand Kishore Prasad, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 22-03-2024 The matter has been placed under the heading
"Orders on Office Notes".

2. Mr. Prince Kumar Mishra, learned counsel for the petitioner submitted that opposite party no. 2 was the party in Cr. Revision No. 1145/2018 along with petitioner, which was set-aside by a learned coordinate Bench of this Court vide order dated 02.05.2019 in Cr. Misc No. 24226 of 2019. Now proceeding as Cr. Revision No. 1142/2018 was brought against O.P. No. 2 namely, Sabhapati Tiwary. In both Criminal Revisions, the date of impugned order is



24.08.2018 as passed by learned Executive Magistrate, Hathua under Section 145 of the Code of Criminal Procedure in Case No. 1818/2012, therefore, learned counsel submits that the circumstances of the case suggesting that O.P. No. 2 is well aware about the present proceeding and he is not appearing intentionally and, moreover, passing the order on similar line will not prejudice O.P. No. 2 in any manner. Hence, learned counsel for the petitioner requested that notice be treated as to serve validly upon O.P. No. 2 and this application may be disposed of in terms of the order dated 02.05.2019 passed in Cr. Misc. No. 24226 of 2019.

3. Learned counsel for the State is present.

4. In view of the aforesaid submission of learned counsel for the petitioner and having gone through the order dated 02.05.2019 as passed by learned coordinate Bench of this Court in Cr. Misc. No. 24226 of 2019, which are being reproduce here under for a ready reference:

"1. Heard learned counsel for the petitioners and learned A.P.P. for the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 08.01.2019 passed by learned Sessions Judge, Gopalganj in Criminal Revision No. 1145 of 2018 whereby learned Sessions Judge by setting



aside the order dated 24.8.2018 passed by learned Executive Magistrate remitted back the matter to the learned Court below to pass detail order in accordance with provision considering the documents filed by the opposite party No. 2 and 3.

3. The factual matrix of the case is that a proceeding under Section 144 Cr.P.C was initiated on the basis of police report. Later on the aforesaid proceeding under Section 144 of Cr.P.C. was converted into Section 145 of the Cr.P.C. After inviting the written statement and adducing of documents by both the parties and considering the facts and circumstances of the case and documents adduced by the parties, the learned Magistrate vide order dated 24.8.2018 declared the possession of the 1st party over the property in question and restrained the 2nd (O.P. Nos. 3 to5) and 3rd party(O.P. No.2) from interfering the peaceful possession of the 1st party on property in question.

4. Assailing the aforesaid order of the learned Executive Magistrate, 3rd party Sitaram Yadav filed Criminal Revision No. 1145 of 2018 which was disposed of by the impugned order by the learned Sessions Judge, Gopalganj.

5. It is submitted by the learned counsel for the petitioner that proceeding under Section 144 Cr.P.C. was initiated on the basis of police report filed by the police at the instance of 1st party. The land in question was originally registered in the name of Khelawan Ahir and after demise of Khelawan Ahir it was inherited by his son Sahdeo Ahir and Chaturi Ahir. The aforesaid Sahdeo Ahir and Chaturi Ahir executed deed of mortgage on 14.8.1931 in favour of Rajaram Mishra son of Sukhdeo Mishra for 2 years and gave possession over the same to him. But even after the lapse of the aforesaid period neither the said mortgagor nor their decendant redeemed the mortgage, so the said Rajaram Mishra become absolute owner of the property who sold the aforesaid property to Bhuwaneshwar Nath Tiwari on 15.4.1939 and gave



possession of the property in question to him. After demise of Bhuwaneshwar Nath Tiwari father of the petitioner, the petitioner has become absolute owner of the said property. 2nd Party (O.P. No. 3 to 5), Jay Prakash Yadav, Jaydip Yadav and Jayram Yadav have claimed right, title and interest over the property in question by way of adoption of one Anita by Lorrik Ahir who happens to son of Sahdeo Ahir submitting that Anita was adopted by Lorrik Ahir son of Sahdeo Ahir and said Anita gifted the aforesaid property to opposite party No.2 (O.P. No. 3 to 5) while the opposite party No. 3 (O.P. No.2) has claimed that Sahdeo Ahir gifted his property to his nephew (Bhagina) namely Bhutali by a gift deed dated 27.12.1972. 2nd Party (O.P. No. 3 to 5) has taken the case of oral adoption. They have not filed any documents in substantiation of their title and possession over property in question.

6. From perusal of the impugned order, it appears that after considering the respective case of the parties and documents filed by the petitioner and opposite No.2, i.e. 3rd party to the proceeding learned Magistrate vide order dated 24.8.2018 declared the possession of the 1st party over the property in question and restrained the 2nd and 3rd party from interfering with the peaceful possession of the 1st party one said property. Learned Executive Magistrate has also taken note of the report submitted by the C.O. as evident from para 27 and 28, but learned lower Court without discussing the facts and circumstances of the case and documents filed by the petitioner and O.P. No.2 and report submitted by the C.O. remitted back the case to the Magistrate observing that the documents filed by 2nd and 3rd party have been ignored by the Magistrate while passing the order.

7. Considering the facts and circumstances of the case, I find that the impugned order passed by the learned Sessions Judge, Gopalganj vide order dated 08.01.2019 in Criminal Revision No. 1145 of 2018 is not



sustainable in the eyes of law and is fit to be set aside. Accordingly, the aforesaid order passed by the learned Sessions Judge, Gopalganj is hereby set aside and the case is remitted back to the learned lower Court to pass afresh order after considering the facts and documents available on the record.

8. Accordingly, this petition is allowed.”

5. In view of the aforesaid, the impugned order passed by the learned Sessions Judge, Gopalganj vide order dated 08.01.2019 in Criminal Revision No. 1142 of 2018 is not sustainable in the eyes of law and is fit to be set aside.

6. Accordingly, the aforesaid order passed by the learned Sessions Judge, Gopalganj is hereby set aside and the case is remitted back to the learned lower Court to pass afresh order after considering the facts and documents available on the record.

7. This application stands disposed of accordingly.

(Chandra Shekhar Jha, J.)

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