

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1338 of 2018

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

Shiv Kumar Singh S/o Late Ashunandan Singh Resident of Village P.O.-
Karma Bhagwan, P.S. Muffasil, Distt.-Aurangabad Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Devendra Kumar Singh S/o Late Madhusudan Singh
3. Rajhiv Ranjan Singh
4. Abhay Kumar Singh Both are son of Late Narendra Kumar Singh
5. Kameshwar Prasad Singh S/o Late Bengali Singh
6. Babban Singh
7. Gagan Singh Both are son of Kameshwar Singh All are Resident of
Village P.O. Karma Bhagwan, P.S. Muffasil, Distt.-Aurangabad

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bhaskar Shankar, Adv.
For the Respondent/s : Mr. Mukeshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 22-01-2024 Having heard the learned Advocate for the petitioner and the learned APP, this Court is of the view that the instant revision assailing an order dated 06.09.2018, passed in Case No. 633 of 2005, Tr. No. 96 of 2017 being a proceeding under Section 147 of the Cr.P.C. can be disposed of even without serving notice to the other side.

2. It is not in dispute that the petitioner filed an application under Section 147 of the Cr.P.C. claiming his easementary right over 04 feet wide on Plot No. 717 and 6 feet wide on Plot No. 718. Initially, the learned Executive Magistrate



on the basis of Police report and local inspection declared petitioner's right of easements over the said two plots. The private opposite party challenged the said order passed by the learned Executive Magistrate in Cr. Revision No. 92 of 2008/51 of 2009 before the learned Additional Sessions Judge-IV, Aurangabad. The said revisional application was allowed setting aside the order of the learned Executive Magistrate. The first party/petitioner preferred a Criminal Revision challenging legality and propriety of the order passed by the learned Additional Sessions Judge-IV, Aurangabad before this Court by filing Cr. Revision No. 341 of 2011. The said revision was disposed of by a Coordinate Bench vide order dated 1st September, 2014. The operating part of the order passed by this Court in the aforesaid revision is as follows:-

“In view of the discussions made above, this Court is not inclined to interfere with the revisional order dated 20.01.2011 but in the interest of justice, the order of learned Revisional Court is modified to the extent that the matter is remanded to the court of learned Executive Magistrate to decide the proceeding afresh under Section 147 Cr. P.C., after issuance of notice, taking all the evidences which is essential for deciding the issue and after recording the finding under proviso to Section 147(3) of the Code including resorting to the provisions of local enquiry as stipulated under Section 148 Cr. P.C. if need be.”



3. Thus the proceeding under Section 147 of the Cr.P.C. was remanded back to the court of the learned Executive Magistrate for taking decision on the basis of the evidence that might be adduced by the parties and on the basis of the finding under Section 147 (3) of the Code. The learned Executive Magistrate, however, vide impugned order dated 6th September, 2018 disposed of the application under Section 147 of the Cr.P.C. stating, inter alia, that the first party is at liberty to move before the proper court for redressal of his grievance. It is held by the learned Executive Magistrate that as the High Court did not set aside the order of the learned Additional Sessions Judge-IV, Aurangabad, dated 20th January, 2011, there is no reason for further hearing of the proceeding under Section 147 of the Cr.P.C.

4. The order dated 6th September, 2018 is per se illegal, inoperative and de hors the direction made by this Court in Cr. Revision No. 341 of 2011. The learned Executive Magistrate is under obligation by virtue of the direction passed by this Court to issue notice upon both the parties and to take evidence and decide the case in the light of the provision contained in Section 147 (3) of the Cr.P.C. The learned Magistrate failed to comply with the said order. Accordingly, the



impugned order dated 6th September, 2018 is set aside.

5. The instant revision is allowed.

6. The learned Executive Magistrate is directed to comply with the order dated 01.09.2014, passed by this Court in Cr. Revision No. 341 of 2011 and dispose of the proceeding under Section 147 Cr.P.C. within six months from the date of communication of this order.

(Bibek Chaudhuri, J)

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