

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17965 of 2016

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

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1. Kedar Rai
 2. Lala Rai
 3. Binod Rai All sons of late Mahabir Rai
 4. Jawahir Rai son of late Raghu Rai
 5. Pawan Rai son of Binod Rai
All residents of village- Dighi Khurd, P.S. Hajipur Sadar, District - Vaishali.
- Petitioners

Versus

1. The State of Bihar
 2. Hulas Rai son of late Chamru Rai Resident of village - Dighi Khurd, P.S. Hajipur Sadar, District - Vaishali.
- Opposite Parties

Appearance :

For the Petitioner/s	:	Mr.Natraj Verma, Advocate Mr.Naresh Chandra Verma, Advocate
For the State	:	Mr.Dr. Ajit Kumar, APP
For the O.P. No.2	:	Mr.Ashok Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 28-03-2024

Heard learned counsel for the petitioners and learned A.P.P. for the State duly assisted by learned counsel for the opposite party no. 2.

2. This application has been filed for quashing the order dated 27.11.2015 passed by learned Sessions Judge, Hajipur in Cr. Revision No. 414 of 2015 and order dated 26.09.2015 passed by learned Sub-Divisional Magistrate, Hajipur in case No. MI-1498 of 2015.

3. The aforesaid proceeding under Section 144 of the Code of Criminal Procedure (in short the 'Cr.P.C.') before learned S.D.M., Hajipur was started on the basis of application filed by one Hulas Rai stating that his



father took settlement of Plot No. 360 area 7 dec., Plot No. 263 area 10 dec. and Plot No. 447 area 3 dec. of village Dighi Khurd under Hajipur Sadar Police Station, but Kedar Rai and others are creating disturbances over the same and, therefore, proceeding under Section 144 of the Cr.P.C. be started. The learned Sub-Divisional Magistrate, after receipt of the same, called for a report from the S.H.O., Hajipur Sadar, who after inquiry, submitted the report vide Non-FIR No. 115 dated 01.08.2015. Thereafter, learned Sub-Divisional Magistrate asked the show cause from both the parties. The petitioner no. 4, being the second party, filed his reply to show cause notice alongwith copy of the order of Hon'ble High Court, Consolidation court and plaint of Title Suit, rent receipts etc. stating therein that the disputed lands are carved out from C.S. Plot No. 378 which was the land of Mishri Lal Rai and Isri Lal Rai, who, in the necessity of money, sold the same to the fathers of the petitioners namely, Mahabir Rai and Raghuni Rai through a registered sale deed dated 31.10.1961 and came in possession and constructed their residential house over the same.

4. The petitioners further stated in their show cause that Hulas Rai purchased the disputed land from



Isri Lal Rai and Mishri Lal Rai through registered sale deed after cancelling the 1961 sale deed and, thereafter, the party started litigating in civil court where the suit abated under section 4(c) of the Consolidation Act, then, litigated in Consolidation court and Joint Director of Consolidation, Muzaffarpur decided the case in favour of the petitioners vide Consolidation Revision Case No. 257 of 1995 on 29.01.1997, against which Isrilal Rai and Mishri Lal Rai filed C.W.J.C. No. 2353 of 2004 and Mishri Lal Rai and Isrilal Rai also filed L.P.A. No. 1192 of 2004 which was also dismissed on 04.04.2006, then, Mishri Lal Rai and Isrilal Rai filed Title Suit No. 185/2006. Opposite Party no. 2 Hulas Rai also filed C.W.J.C. No. 15268/2004, which was also dismissed as withdrawn to pursue Title Suit filed by Mishri Lal Rai, but the said suit was dismissed. Petitioners further stated that Hulas Rai also filed Title Suit No. 112/2009 before the Sub-Judge, Hajipur against the petitioner for the same land for declaration of title, which is still pending and, therefore, the present proceeding is not maintainable in the eye of law.

5. Mr. Natraj Verma, learned counsel appearing on behalf of the petitioners submitted that the Sub-



Divisional Magistrate, Hajipur through order dated 26.09.2015 himself observed that the issue involved is complicated issues of land dispute and initiated proceeding under Section 145 of the Cr.P.C. It is submitted that in the said proceeding opposite party no. 2 did not disclose about pending Title Suit between the parties. In such circumstance, the parallel criminal proceeding is apparently bad in the eyes of law. In support of his submission, learned counsel relied upon the legal report of this Court, as reported in the matter of **Ram Bihari Rai Vs. State of Bihar**, reported in **2013(4) PLJR 49**.

6. Learned A.P.P. for the State duly assisted by learned counsel for the opposite party no. 2, while opposing the application, conceded the pendency of civil suit between the parties for the same disputed land, which is the subject matter of present proceeding under Section 145 of the Cr.P.C.

7. It would be apposite to reproduce paragraph '7' of the aforesaid **Ram Bihari Rai** (supra), which reads as under:

"7. The Apex Court has delved into the similar issue in the case of **Ram Sumer Puri Mahant Vs. State of U.P., AIR 1985 SC 472** and has laid down that the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders



such as injunction or appointment of receiver for protection of property. The same view has been reiterated and clarified further by the three judges bench of the Apex Court in the case of **Amresh Tiwary Vs Lalta Prasad Dubey 2001(1) PLJR (SC) 135** where it has been laid down that in cases where civil suit is for possession or for declaration of title for the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court, the proceeding under Section 145 Cr.P.C. should not be allowed to continue. Tested on the anvil of this principle, it is manifest that the revisional court has decided the matter illegally and inconsistently with this principle. In view of the pendency of the civil suit as aforementioned between the same parties, the order of the Sub-Divisional Magistrate dropping the proceeding did not suffer from any error or illegality.”

8. In view of the aforesaid factual and legal submission as admittedly the Title Suit regarding same disputed land is pending between the parties, the impugned order dated 27.11.2015 passed by learned Sessions Judge, Hajipur in Cr. Revision No. 414 of 2015 and the order dated 26.09.2015 passed by learned Sub-Divisional Magistrate, Hajipur in case No. MI-1498 of 2015 are hereby set-aside and quashed accordingly *qua petitioners*.

9. This application stands allowed.

10. Let a copy of this judgment be sent to learned trial court immediately.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.03.2024
Transmission Date	29.03.2024

