

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1333 of 2018

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

Madan Bind, Son of Late Dashrath Bind, Resident of Village- Baghwanpur,
P.S.- Chainpur, District- Kaimur.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Bharat Bind, S/o Baldeo Bind, Resident of Village- Bhagwanpur, P.S.-
Chainpur, District- Kaimur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ravi Shankar Sahay, Advocate
For the Respondent/s : Mr. Zainul Abedin, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

10 05-02-2024

The petitioner is owner of a piece of land. According to the petitioner, there is a two-feet-wide passage between the residential house of the petitioner and the adjacent land through which the petitioner had easementary right. The second party, claiming himself to be purchaser of the said adjacent land, from the coparceners of the petitioner disputed existence of easementary right over the said two-feet-wide passage, stating *inter alia* that in his deed of conveyance, there was no existence of passage mentioned therein and therefore the petitioner was obstructed from using the said passage. This laid the petitioner to file an application under Section 133 of the Cr.P.C. The learned Trial Judge *vide* his order dated 14th of September, 2017, which is impugned in the instant revision rejected the said application on the ground that the application was filed under



Section 133 of the Cr.P.C. and not under Section 147 of the said Act. Therefore, the application is said to be not maintainable.

2. It is no longer *res integra* that non-mentioning or wrong mentioning of any provision of law in the application does not vitiate the rights and obligations of the parties. The learned Executive Magistrate would have, on his own motion, converted the application under Section 147 of the Cr.P.C.

3. In view of the above discussions, I am not in a position to concur with the observation made by the learned Executive Magistrate. He rejected the proceeding filed by the petitioner only on technical grounds.

4. Therefore, the impugned order is quashed and set aside.

5. Since the dispute relates to easement over land, efficacious relief for the petitioner lies in filing a suit for declaration and permanent injunction in the Civil Court.

6. However, as the case may be, the impugned order cannot be sustained. The same is therefore set aside and the instant Revision is allowed.

(Bibek Chaudhuri, J)

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