

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.602 of 2024

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

Vishwanath Prasad @ Vishwanath Prasad Keshari, Son of Late Chamrual Keshari, Village- Ekangarsarai, PS- Ekangarsarai, Dist- Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shivnath Prasad Keshari, Son of Late Chamrual Keshari, Village- Ekangarsarai, Islampur Road PS- Ekangarsarai, Dist- Nalanda
3. Mukesh Kumar, Son of Shivnath Prasad Keshari, Village- Ekangarsarai, Islampur Road PS- Ekangarsarai, Dist- Nalanda
4. Vikash Kumar, Son of Shivnath Prasad Keshari, Village- Ekangarsarai, Islampur Road PS- Ekangarsarai, Dist- Nalanda
5. Shankar Kumar, Son of Shivnath Prasad Keshari, Village- Ekangarsarai, Islampur Road PS- Ekangarsarai, Dist- Nalanda

... .. Respondent/s

Appearance :

For the Petitioner/s :	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate
For the Respondent/s :	Mr. Madhuri Lata, Advocate Mr. Gautam Shah, Advocate Mr. Rajeev Kumar, Advocate Mr. Satyendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

10 24-04-2025 Land dispute between two full-brothers and their family members led the parties to fight legal battle amongst themselves.

2. The instant revision is directed against an order dated 21st June 2024 passed by learned Additional Sessions Judge V, Hilsa, Nalanda in Criminal revision no. 10 of 2023 preferred by the Opposite parties whereby and whereunder the



learned Judge allowed the revisional application filed by the opposite parties setting aside an order dated 17th January 2023 passed by learned Sub-Divisional Magistrate, Hilsa in Case no. 53 MP/2021/36M/2022 by virtue of which the opposite parties were restrained from constructing a pillar on common pathway (*rasta*). Suffice it to say that the petitioner and the opposite party no. 1 inherited their ancestral property situated at Ekangarsarai within police station of Ekangarsari within the district of Nalanda. Admittedly, the parties mutually partitioned their property leaving a 7 feet wide piece of land for the purpose of common *rasta*. It is also not disputed that in the ground floor of their ancestral house both the parties had their respective shops and the common road is used for ingress and egress of the parties as well as the customers who come to the shop for commercial purpose. It is alleged by the petitioner that the opposite party had been raising a pillar blocking a portion of the said common pathway to put support to the first floor of the construction which fell to his portion due to the reason that the said portion is dilapidated and it may crumble down at any point of time.

3. Against the said act of the opposite party no. 2, the petitioner filed an application under Section 147 of the CrPC



stating, *inter alia*, that if such pillar is constructed it will cause obstruction to the petitioner, his family members as well as his customers which would in turn cause breach of peace in the family. The learned Magistrate passed an order restraining the Opposite party from constructing any pillar on the common area of the parties.

4. The opposite parties preferred a criminal revision in the court of the learned Additional Sessions Judge at Hilsa (Nalanda). The said revision is registered as Criminal Revision No. 10/2023. It was disposed of on 21st June 2024 by the learned Revisional court holding, *inter alia*, that the Executive Magistrate wrongly held that the opposite party wanted to construct pillar for the protection of his house over 6 feet road. But the fact remains that the opposite party wants to construct a pillar over 3 feet out of 6 feet wide road. The said 3 feet common area was left during partisan by the opposite party. Thus, the opposite party wants to construct the pillar on his portion of the common pathway. So, the present petitioner has no right and authority to raise any objection against such act of the opposite party.

5. On the above observation, the learned Additional Sessions Judge allowed the revision and permitted the opposite



party to construct the pillar over the said 3 feet of land.

6. I have heard the learned counsels for the petitioner and the opposite parties. It is not in dispute that the property in question falls within the municipal area. Rule 316 of Bihar Municipal Act, 2007 clearly states that for construction, repair, renovation of any building, the construction plan must be approved by the municipality. In the instant case, the opposite parties did not obtain any sanction plan for construction of a pillar for protection of his house. Moreover, the question as to whether a co-sharer is entitled to construct a pillar on the common pathway for the protection of his house or not is essentially a civil dispute, to be determined by the civil court.

7. I am told by the learned Advocates for both the parties that the civil suit between the parties on the self same question is pending before the competent court of civil jurisdiction. In view of such circumstances, the parties are advised to take appropriate step in the said civil suit to get an appropriate order. Neither the Executive Magistrate nor the court of the learned Additional Sessions Judge exercising revisional jurisdiction can decide the question as to whether the opposite party ought to be permitted to construct a pillar on a portion of common pathway.



8. For the reasons stated above, this Court finds that the order passed by the revisional court in Criminal Revision No. 10 of 2023 *vide* order dated 21st June 2024 is liable to be set aside. Accordingly, instant criminal revision is allowed on contest. However there is no order as to cost.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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