

(2006) 07 JH CK 0028

Jharkhand High Court

Case No: S.A. No. 208 of 2005

Chandrama Devi and Umakant
Tiwari

APPELLANT

Vs

Smt. Puna Devi

RESPONDENT

Date of Decision: July 13, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 144, 145

Citation: (2006) 4 JCR 175

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: Manjul Prasad and Ananda Sen, for the Appellant; D.K. Chakraverty, for the Respondent

Final Decision: Dismissed

Judgement

Narendra Nath Tiwari, J.

This is the defendants' appeal against the judgment and decree of affirmance passed by learned Additional District Judge, Jamshedpur in Title Appeal No. 41 of 1999 affirming and upholding the judgment and decree of learned Trial Court.

2. The plaintiff had filed Title Suit No. 54 of 1991 in the Court of Subordinate Judge, Jashedpur praying decree for declaration that the plaintiff is the absolute owner of the suit property and that the defendants have got no manner of right, title and interest thereof. The plaintiffs also sought declaration of right, title and possession.

3. The plaintiffs case in short is that the suit property was originally recorded in the name of Binod Bhagat and his co-sharer in survey records finally published in 1964. There was partition amongst the co-sharers. After the death of Binod Bhagat, his only son Ganesh Bhagat inherited the suit properly. Ganesh Bhagat entered into an agreement for sale dated 30th January, 1984 with the plaintiff and on payment of Rs. 3000/- as an advance, the plaintiff was put in possession of the said land. Said

Ganesh Bhagat, then, executed registered deed of sale through power of attorney holder Gaya Singh on 04.10.1985. The plaintiff, after the said purchase, got her name mutated in the revenue records and has been paying rent regularly. One Ras Bihari Mondal had collected some building material over the suit land and wanted to dispossess the plaintiff in November, 1983. Subsequently, the plaintiff paid Rs. 8910/- to Ras Bihari Mondal, who disclaimed his rights Again in March, 1984 said Ras Bihari Mondal started disturbing plaintiffs possession claiming that he had purchased the suit plot from Binod Bhagat by virtue of a panchnama 30 years back. The said dispute, subsequently, led to a proceeding u/s 145 of the Code of Criminal Procedure. In the said proceeding, possession of Ras Bihari Mondal was declared by the Executive Magistrate. The plaintiff filed revision against the said order and in the said revision he was directed to go to Civil Court for getting proper relief. Emboldened by the said order passed in 145 Cr.P.C. proceedings, the defendants entered into plaintiffs land behind her back in July 1987. The plaintiff stated that the defendants have got no manner of right, title and interest over the suit property and they have illegally and unauthorisedly trespassed over the suit property in July 1987 and they are liable to be evicted therefrom.

4. The defendants appeared and contested the suit. It was, inter alia, stated in the written statement that the house standing on the suit land belongs to Binod Kumar Bhagat and his co-sharers. There was no partition amongst the co-sharers of Binod Bhagat. Ganesh Bhagat had no right, title or interest or possession over the suit land or the house. The agreement dated 30th January, 1984 and subsequent document of power of attorney were all collusive and manufactured documents and the said documents did not confer any right, title and possession over the suit land. Ras Bihari Mondal has been in possession of the suit land since long. Even before initiation of the proceedings u/s 144 of the Code of Criminal Procedure in 1983, Gaya Singh, husband of the plaintiff had approached Ras Bihari Mondal to purchase the land for consideration of Rs. 25000A. Out of that, Rs. 8,910/- was agreed to be paid in advance. Subsequently, the agreed advance was not paid and Ras Bihari Mondal did not execute sale deed in favour of the plaintiff. Ras Bihar Mondal, all along remained in possession. He also constructed the house. The said Ganesh Bhagat had no right to enter into any agreement for sale or execute any sale deed in favour of the plaintiff and the sale deed dated 04.10.1985 was mere a paper transaction. No title passed on the basis thereof. The plaintiff had never been in possession over the suit land. In the 145 Cr.P.C. proceedings, the possession of Ras Bihari Mondal was rightly declared by learned Magistrate. The said panchayati document was prepared by said Binod Bhagat accepting the delivery of possession of land in favour of Ras Bihari Mondal. The defendants were in possession for more than 12 years peacefully and adversely to the knowledge of Binod Bhagat. The defendant No. 1 entered into an agreement for sale for the said land and structure in part performance of contract. They were given possession of the same. Ras Bihari Mondal, in the meanwhile died and could not take registered sale deed in favour of

the defendant No. 1, but the defendant No. 1 had been continuing in peaceful possession of the property without any interference from any side.

5. Learned Trial Court, on the basis of the said pleadings, framed several issues. The parties led their evidences, oral and documentary. Learned Trial Court, after thorough appraisal and consideration of all the facts, evidences and materials on record, came to the finding that the plaintiff has been able to prove right, title and she is entitled to get recovery of the suit property. Learned Trial Court decided almost all the issues in favour of the plaintiff and decreed the suit declaring the plaintiff as absolute owner of the suit property and directing the defendants to vacate the suit premises and to give vacant possession of the suit land to the plaintiff. The defendants filed an appeal against the said judgment decree in the Court of the District Judge, Jamshedpur which was registered as Title Appeal No. 41 of 1994. The said appeal was finally heard and decided by 1st Additional District Judge, Jamshedpur. In view of the grounds taken before the Lower Appellate Court, he look up the appeal and considered the same issue wise and after thorough scrutiny and consideration of the evidences and materials on record, the Lower Appellate Court concurred with the findings and held that the plaintiff acquired valid right, title by virtue of registered sale deed Exhibits and that the defendants, without any legal right or title, trespassed other the sanitiand illegally. Learned Lower Appellate Court found no merit in appeal and dismissed the same.

6. Mr. Manjul Prasad, learned senior counsel appearing on behalf of the appellant assailed the judgment and decree on the ground that the suit itself was bad for not making a prayer for setting aside the order passed on the proceedings u/s 145 of the Code of Criminal Procedure. Learned Counsel submitted that admittedly there is an order of learned Magistrate passed u/s 145 of the Code of Criminal Procedure, i.e., an impediment in the way of getting the relief prayed for by the plaintiff. Learned Counsel submitted that unless and until the said order is set aside or the order passed u/s 145 of the Code of Criminal Procedure is set aside, the plaintiff cannot be granted the relief prayed for and us such the impugned judgment and decree of both the Courts are vitiated on that ground.

7. After hearing learned Counsel for the appellants and perusing the records and impugned judgment and decree, it is evident that the plaintiff has prayed a relief for declaration of her right, title and interest over the suit land and for recovery of possession. The order of learned Executive Magistrate passed in 145 Cr.P.C. proceeding has given rise to the cause of action for the said suit. In my opinion no relief for setting aside the order of learned Executive Magistrate passed u/s 145 of the Code of Criminal Procedure is required to be made in the suit praying for declaration of right, title and recovery of possession in a Civil Court of competent jurisdiction. An order passed u/s 145 of the Code of Criminal Procedure itself is temporary in nature and is operative until a decree or order passed by a Court of competent jurisdiction. In view thereof, the said order cannot be said to be an

impediment in granting the relief for declaration of right, title and possession by the Civil Court. I, therefore, find no substance in the ground taken by learned Counsel for the appellant. I find no ground to be made out giving rise to any substantial question of law to be framed and decided by this Court in this second appeal. This second appeal is, accordingly, dismissed.