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(2011) 09 PAT CK 0163

Patna High Court

Case No: Criminal Revision No. 138 of 2002

Uma Shankar Singh and Dharamraj Singh		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision: Sept. 21, 2011

Acts Referred:

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

Hon'ble Judges: Amaresh Kumar Lal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

1. The first party- Petitioners have preferred this revision application against the order dated 9.1.2002 passed by the learned 2nd Additional Sessions Judge, Buxar in Cr. Revision No. 225 of 2000 by which he has been pleased to set aside the order dated 12.10.2000 passed by the learned Sub-divisional Magistrate, Dumraon in Case No. 657 of 1998 in a proceeding u/s 145 Code of Criminal Procedure declaring the Petitioners in possession of the land, in question.

2. Heard learned Counsel for the Petitioners and learned Counsel for the State and perused the record.

3. No. one appears on behalf of opposite party Nos. 2 to 11, even after appearance through vakalatnama except opposite party No. 7 who has not appeared even after service of notice.

4. It appears that first party -Petitioners have filed a petition before the learned Sub-divisional Magistrate, Dumraon vide Case No. 657 of 1998 with regard to the land in dispute. The case of first party- Petitioners is that they had purchased the land situated in Mauza Chaugai bearing Khata No. 465, Kesara No. 2447, area 9 dhur, 12 dhuraki and

Khata No. 1270, Kesara No. 2429, area 12 dhur, 16 dhuraki from Mahendra Singh by registered sale deed dated 24.6.1997 and came into possession and second party-opposite party Nos. 2 to 11 after forming an unlawful assembly want to take possession of the land.

5. The case of second party- opposite party Nos. 2 to 11 is that they purchased the land from Krishna Singh and his mother Balbacho Devi situated in Mauza Chaugai bearing Khata No. 1270, Kesara No. 2429, area 5 1/2 decimal by registered sale deed dated 28.3.1998 and came in possession. The first party-Petitioners have No. possession on the land and they want to take possession over the land.

6. Both the parties have adduced their oral as well as documentary evidence. After hearing both the parties, the possession of first party -Petitioners was declared on the land, in question, by the learned Sub-divisional Magistrate vide order dated 12.10.2000 in Case No. 657 of 1998. Thereafter, the second party- opposite party Nos. 2 to 11 preferred Cr. Revision No. 225 of 2000 in the court of learned Sessions Judge, Buxar which was later on heard by leaned 2nd Additional Sessions Judge who was pleased to set aside the aforesaid order dated 12.10.2000 passed by the learned Sub divisional Executive Magistrate, Dumraon in Case No. 657 of 1998 with an observation that parties of the proceeding may file a suit before the Court of competent jurisdiction for final adjudication of their rights, if so advised.

7. It appears from the order dated 12.10.2000 passed by the learned SDM that the vendors of both the parties are co-sharers of the land and genealogy has been mentioned in paragraph 8 of the present revision application which shows that the lands in dispute are recorded in the khatian in the name of late Ramroop Singh and his wife Talakrajo Kuer (since dead). The four sons of Ramroop Singh, namely, Jayanendra @ Laloo Singh, Lal Saheb, Ram Dhani @ Dauji Singh and Babban Singh partitioned ancestral property including the disputed plots among themselves by mutual consent and Mahendra Singh came in possession of his respective share including the disputed plot No. 2429 having total area of 76 decmimal and Mahendra Singh, son of Lal Saheb got 39 decimals out of total area of plot No. 2429 whereas Baban Singh got No. share in plot No. 2429, whereas, other two sons of late Ramroop Singh got 37 decimals out of aforesaid plot. However, in course of proceeding Plot No. 2433 was deleted from the proceeding and the proceeding was confined only to two plots. Second party- opposite party Nos. 2 to 11 having full knowledge of transfer of land to the first party- Petitioners by registered sale deed dated 24.6.1997 and also having knowledge of order dated 3.10.1997 of mutation case, obtained a registered sale deed in respect of 5 1/2 decimals from Krishna Singh son of Gyanandra singh @ Laloo Singh on 28.3.1998. It has been submitted that second party- opposite party Nos. 2 to 11 filed an appeal against the mutation in favour of the 1st party- Petitioners which was dismissed. It has been found that after purchase first party Petitioners have constructed a house in Khesara No. 2429 over half decimal out of 2 decimals and second party- opposite party Nos. 2 to 11 have failed to produce any witness showing their possession over two decimals of land of Plot No. 2429.

8. After hearing learned Counsel for the Petitioners and learned Counsel for the State, it appears that the order passed by the learned Sub-divisional Magistrate is in accordance with law and based on the evidence adduced on behalf of both the parties. Learned Additional Sessions Judge was not justified in setting aside the order dated 12.10.2000 passed by the learned Sub-divisional Magistrate, Dumraon.

9. Considering the facts and circumstances stated above, in my opinion, the impugned order dated 9.1.2002 passed by the learned 2nd Additional Sessions Judge, Buxar is not fit to be sustained. It is set aside.

10. In the result, this petition is allowed.