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Court : Patna

Decided On : Mar-28-2014

Judge : Jyoti Saran

Appeal No. : Criminal Revision No. 496 of 2003

Appellant : Ramashray Yadav and Others

Respondent : The State of Bihar and Another

Judgement :

Heard Mr. Subodh Kumar, learned counsel appearing on behalf of the petitioners, learned counsel for the State and Mr. Arbind Kumar Sharma, learned counsel appearing for the opposite party no.2.

This criminal revision application is directed against the order dated 15.5.2003 passed in Criminal Revision No.386 of 2002, whereby the learned Sessions Judge, Begusarai while setting aside the order dated 10.7.2002 passed by the Sub-Divisional Magistrate, Bakhri in Case No.223M of 2001, has directed the Magistrate to proceed with the matter arising out of the proceeding under section 145 of the Code of Criminal Procedure (hereinafter referred to as the Code).

The dispute pertains to a land bearing Khata no.40, Khesra No.28, having an area of 1 bigha 16 dhurs situated in Mauza- Akha, Tauzi No.604 in the district of Begusarai. According to the petitioners, a similar proceeding was initiated under section 145 of the Code at the behest of the opposite party no.2 Maheshwar

Yadav relatable to the very same land which is the subject-matter of the present proceeding and which was decided in favour of one Abul Khair inasmuch as the Magistrate declared the possession of the 2nd party, namely, Abul Khair over the plot in question. It is the case of the petitioners that said Abul Khair is none other but the predecessor in interest of the present petitioners who has purchased the land in question from Abul Khair through separate sale-deeds. These facts are not in dispute.

The earlier proceeding was initiated in the year 1971 and almost 30 years thereafter that the present case has been instituted again at the instance of Maheshwar Yadav who is opposite party no.2 herein again raising similar issue and seeking prohibitory order against the 2nd party who are the present petitioners and the successor in interest of the erstwhile owner Abul Khair. Upon notice being issued to the 2nd party-petitioners, they responded by filing their show cause and drew the attention of the learned Magistrate towards the order dated 30.6.1977 passed in the earlier proceeding placed at Annexure-1 and the learned Magistrate vide order passed on 10.7.2002 dropped the proceeding as being without sanction of law in view of the determination of the issue in the earlier round of proceedings. The opposite party no.2 who was the 1st party in the proceeding preferred Criminal Revision No.386 of 2002 and the learned Sessions Judge even while noticing the circumstances governing the case, but merely on grounds that there was a change in the ownership of the land, has set aside the order passed by the Magistrate and remitted the matter for proceeding afresh in accordance with law which order was passed on 15.5.2003.

I have heard learned counsel for the parties and I have perused the materials on record. A determination of possession is a finding of fact to be recorded by the Magistrate concerned on the basis of the evidence on record. As observed by this Court hereinabove in the earlier round of proceeding initiated at the instance of the opposite party no.2 bearing Miscellaneous Case No.411 of 1971, the possession of Abul Khair, the predecessor in interest of the petitioners was declared and which order was never questioned by the opposite party no.2 before any superior court and has attained finality.

As I have taken note that the said order having been passed on 30.6.1977, the plot of land was sold in favour of the present petitioners subsequently through separate sale-deeds and the petitioners stepped into the shoes of the vendors who were the 2nd party in the earlier round of proceeding. The opposite party no.2 having kept quiet for 24 years since the passing of the earlier order on the issue of possession over the plot in question, again sought to disturb this position by again raising the bogey of possession and the learned Magistrate appreciating the circumstances rightly did not find sufficient ground to proceed with the matter and dismissed the case vide order dated 10.7.2002 passed in Case No.223M of 2001. The Sessions Court by the impugned order dated 15.5.2003 passed in Criminal Revision No.386 of 2002 has upset this position only on grounds of passage of time and the change of ownership even after noticing the legal position settled by this Court.

As I have observed, a declaration of possession is a finding of fact and cannot be re-agitated by filing repeated applications more particularly by a person who has lost the same in the earlier proceeding. It is plain and simple that repeated proceeding filed by the litigant who has been unsuccessful in the earlier round of such proceeding is vexatious in nature and was rightly rejected by the Magistrate. By mere change of ownership an issue of possession does not change inasmuch as the successor in interest merely steps into the shoes of his vendor. Thus once the issue of possession has been declared in favour of the vendor of the petitioners, the situation does not alter by mere transfer of interest in favour of petitioners and that also after such long lapse of time.

In the circumstances the order impugned dated 15.5.2003 passed by the Sessions Judge, Begusarai in Criminal Revision No.386 of 2002 cannot be upheld and is accordingly set aside.

This criminal revision application is allowed but without any order as to costs.

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