

Raja Bind and ors. Vs. State of Bihar

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SooperKanoon Citation : sooperkanoon.com/122792

Court : Patna

Decided On : Jan-23-2008

Judge : Anwar Ahmad, J.

Appellant : Raja Bind and ors.

Respondent : State of Bihar

Disposition : Application allowed

Prior history : Anwar Ahmad, J. 1. This is an application filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 6th December, 2004 passed by the Sessions Judge, Kaimur at Bhabua in Criminal Revision No. 49 of 2004 and also for quashing the order dated 19th March, 2004 passed by the Executive Magistrate, Kaimur in Case No. 17 of 2000 under Section 145 of the Code of criminal Procedure. 2. Narayan Bind, Opposite Party No. 2, filed a petition, vide Annexure-1, in the court of S

Judgement :

Anwar Ahmad, J.

1. This is an application filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 6th December, 2004 passed by the Sessions Judge, Kaimur at Bhabua in Criminal Revision No. 49 of 2004 and also for quashing the order dated 19th March, 2004 passed by the Executive Magistrate, Kaimur in

Case No. 17 of 2000 under Section 145 of the Code of criminal Procedure.

2. Narayan Bind, Opposite Party No. 2, filed a petition, vide Annexure-1, in the court of Sub Divisional Magistrate, Bhabua for initiating a proceeding under Section 145 of the Code of Criminal Procedure in respect of Plot No. 166 under Khata No. 62 situate in Village Harinathpur, P.S. Sonhan, District - Kaimur, shown in Najari map given at the foot of the plaint, for restraining the members of the opposite party who are petitioners here from going over the said land and disturbing his possession. Area of the land and boundary has not been disclosed.

3. After hearing both the parties and perusing the evidence adduced the learned Sub Divisional Magistrate passed the impugned order dated 19th March, 2004, vide annexure-3, declaring the possession of the 1st Party over the said land restraining the opposite party from making any interference in the peaceful possession thereof. Against this order, the petitioners filed a revision No. 49 of 2004 and the revisional court under the impugned order dated 6th December, 2004 dismissed the revision.

4. The learned lawyer for the petitioners submits that Plot No. 166 under Khata No. 62 measuring an area of 12 decimals has been settled by the State of Bihar under the Bihar Privileged Home Tenancy Act giving 3 decimals of land to each of them followed by delivery of possession. He submits that they constructed their houses thereon and are residing therein. He submitted that they are paying rent to the State of Bihar and in lieu thereof they receive rent receipts. In support of his contention demarcation of land of three decimals to each to the petitioners, vide Annexure-2, has been filed. Rent receipts, vide annexure 15 to 17, have been filed. He further submits that opposite party as per his petition (annexure-1) is said to have been given 3 decimals of land of the said land by the State of Bihar under the Bihar Privileged Home Tenancy Act and in support thereof Parcha has been filed, but that Parcha contains plot No. 136 and did not contain the name of any person to whom that parcha was issued. He submits that as such the opposite party who is said to have acquired 3 decimals of land through settlement by the State of Bihar under a Parcha stands falsified. He submits that petitioners have filed copies of parchas of settlement in their favour. He further submits that the plot

in dispute has got an area of 12 decimals whereas the petitioners are said to have got 3 decimals thereof by settlement but which part was settled to them has not been disclosed. He further submits that boundary has also not been disclosed. As such he submits that it is not certain and specific as to which part of the plot in question has been settled to the opposite party. He, therefore, submits that the impugned orders are fit to be quashed.

5. The learned lawyer for the opposite party submits that of course, the parcha which has been filed on behalf of the opposite party did not contain the name of the opposite party and further it contains plot No. 136 but as a matter of fact plot No. 136 instead of plot No. 166 has been inserted by mistake. He submits that even for the sake of argument it is accepted that there is no parcha in the name of the opposite party but the fact remains that he was in possession of the land in question as held by the Executive Magistrate as well as by the revisional court. So, he submits that the miscellaneous case is fit to be dismissed.

6. Admittedly, Plot No. 166 in question has got total area of 12 decimals. As per the opposite party, 3 decimals of land have been settled to him and he is in possession thereof, but he did not disclose the portion or part of Plot No. 166 having total area of 12 decimals settled to him and he also did not disclose the boundary of that portion settled to him or in his possession. As such this is uncertain and not specific as to what portion of plot No. 166 is in his possession. In such a situation, his possession over the uncertain and non-specific portion of land cannot be declared.

7. In view of discussions made above, I find that there is merit in the miscellaneous case and it is fit to be allowed.

In the result, this application is allowed and both the impugned orders are hereby quashed.