

Ram Nihora Singh Vs. Ram Sanjwan Singh

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Court : Patna

Decided On : Apr-12-1994

Judge : Loknath Prasad, J.

Appeal No. : Criminal Revision No. 686 of 1993

Appellant : Ram Nihora Singh

Respondent : Ram Sanjwan Singh

Disposition : Application Dismissed

Judgement :

Loknath Prasad, J.

1. This is an application under Section 397 read with Section 401 of the Code of Criminal Procedure for setting aside the order passed by Sub-divisional Magistrate, Sitamarhi (Sadar) in Case No. 105/ 93 which was filed under Section 145, Cr. P.C.

2. The facts, in short, giving rise to this application is that the petitioner claimed that he is recorded tenant of Plot Nos. 3910 and 3913 under Khata No. 471 and Plot Nos. 2112 and 2113 of Khata No. 159 along with other co-sharers in the revisional survey record of rights and the opposite party has no connection with these lands. However, the opposite party claiming himself to be an heir from the

common ancestor, namely, Gopal Singh filed an objection under Section 10 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as 'the Bihar Consolidation Act') and claimed to 2/3rd share over the land of Khata Nos. 159, 160 and 471 of vil. Rampur but the Consolidation Officer after hearing both the parties rejected the claim of the opposite party. Aggrieved by that the opposite party tiled an appeal before the Deputy Director, Chakbandi, Sitamarhi under Section 10 of the said Act and the Deputy Director after hearing parties allowed the appeal vide order dated 28-12-1992 and an order was passed for adding the name of the opposite party along with other co-sharers in respect of the lands of these Khatas. Against that order the petitioner also filed a revision under Section 35 of the Act which is pending before the Joint Director of Consolidation, Muzaffarpur.

3. It is also alleged that being emboldened by the order dated 28-12-92 passed by the Deputy Director of Consolidation the opposite party began to claim the disputed lands that is portion of the land of Khata Nos. 159 and 471 of village Ratanpur and on the recommendation of the local police a proceeding under Section 144, Cr. P.C. was initiated by the Sub-divisional Magistrate (Sadar), Sitamarhi which was converted into a proceeding under Section 145, Cr. P.C. In that very proceeding the opposite party filed a petition on 10-6-93 that the Consolidation authority passed necessary order in favour of the opposite party declaring him to be the raiyat of the disputed land whereas entries were made in the register in the consolidation proceeding and so this proceeding under Section 145, Cr.P.C. is liable to be dropped. Vide impugned order dated 19-7-93 the S. D. M. on the basis of the authorities reported in 1984 BBCJ 316 and some other decisions of this Court dropped the proceeding under Section 145, Cr. P.C.

4. Being aggrieved and dissatisfied with the order this revision application has been preferred mainly on the ground that the learned Executive Magistrate has no right to drop the proceeding and admittedly there was apprehension of breach of peace and at best the order passed by the consolidation authority may be treated as an evidence in favour of the opposite party and in any view of the matter the Executive Magistrate should have decided the proceeding on merit after taking evidence of the parties concerned and on this score only the impugned order is

liable to be set aside.

5. In pursuance of the notice issued by this Court the opposite party entered appearance and filed a counter-affidavit and it was submitted that admittedly there was under Section 145, Cr. P.C. proceeding in respect of some lands of Khata Nos. 471 and 159 and in fact one Gopal Singh was the common ancestor and he died leaving behind three sons, namely, Inderjit Singh, Brij Mohan Singh and Sukhdayal Singh. Sukhdayal Singh died in the year 1938 but he adopted Jitu Singh, the father of the opposite party as his son by a registered deed of adoption and thus Jitu Singh who was the son of Brij Mohan Singh became the owner in respect of 2/3rd share in respect of these lands whereas the petitioner is the heir from the branch of Inderjit Singh one of the sons of Gopal Singh and the petitioner and his other co-sharers only got 1/3rd share over these lands. During the revisional survey the opposite party and his brother were minors and the petitioner Ram Nihora Singh was looking after the survey operation dishonestly got the revisional survey done in wrong manner but in spite of that opposite party and his family members were in possession of 2/3rd share over these lands. During Chakbandi operation on behalf of the opposite party a petition was filed under Section 10(2) of the Act but the Consolidation Officer rejected the claim but on appeal the Deputy Director of Consolidation, Sitamarhi allowed the appeal being Appeal No. 169/1991, vide order dated 28-12-93 and ordered that the opposite party may be recorded as raiyat in respect of Khata Nos. 159, 160 and 471 to the extent of 2/3rd share. Even a revision was performed being Revision No. 56 of 1993 but that too was dismissed and order was passed in favour of this opposite party.

6. It was submitted that the opposite party being one of the co-sharers to the extent of 2/3rd share and the . Consolidation Officer already found the possession and title of the petitioner vide order dated 28-12-93 and that order was also confirmed in revision by the Joint Director, Consolidation and as such it is well-settled that the Magistrate under Section 145, Cr. P.C. has to pass an order in accordance with the recent judgment of the Civil Court and as such continuance of the proceeding was apparently illegal and the Executive Magistrate was perfectly justified in dropping the proceeding.

7. Admittedly the Case No. 105/93 was a proceeding under Section 145, Cr. P.C. in respect of some of the lands of Khata Nos. 159 and 471 of village Ratanpur and the petitioner was the first party whereas the opposite party was the second party and the learned Executive Magistrate vide impugned order dated 19-7-93 came to the conclusion that during the pendency of the proceeding the Consolidation Officer recorded that the opposite party was a raiyat in respect of 2/3rd share and found his possession over the disputed lands so there was no need of continuance of proceeding in view of some authorities of this Court and dropped the proceeding vide impugned order dated 19-7-93.

8. The only point urged before me by the learned Counsel for the petitioner is that admittedly the proceeding was initiated on the basis of the police report for the reason that there was apprehension of breach of peace and both the parties were claiming possession over the disputed lands. In that view of the matter the Executive Magistrate was not justified to drop the proceeding without entering into the merit and he should have disposed of the proceeding after taking evidence of both the parties and at best the findings of the Consolidation authority could have been taken as evidence on behalf of the opposite party and there was no provision in the entire Consolidation Act that if a finding is to be recorded by Consolidation authority then initiation of the proceeding under Section 145, Cr. P.C. is barred. In that view of the matter the order of the learned Executive Magistrate is misdirected and apparently illegal.

9. On the order hand it was submitted that the contention of the opposite party that he got 2/3rd share over the disputed land he is in possession of the same as a tenant was even upheld in revisional jurisdiction that too by Joint Director Consolidation as is evident from Annexure B and so the Consolidation authorities finally decided the entire case in favour of the opposite party. In that view of the matter continuation of the proceeding under Section 145, Cr. P.C. will be erroneous and its continuation is not at all necessary and will be misuse of the process of the Court in view of the authorities of this Court.

10. There is no doubt and also clear from Annexures A and B that first of all vide order dated 28-12-93 the Deputy Director of Consolidation came to the conclusion

that the opposite party got 2/3rd share over the disputed land and as such ordered that in the register maintained under the Consolidation Act the name of this opposite party may be recorded as tenant. Against that order the petitioner preferred a revision bearing Revision No. 56/93 before the Joint Director of Consolidation, Muzaffarpur and that too was dismissed vide order dated 18-11-93 so far consolidation proceeding is concerned, it terminated finally in favour of the opposite party. Under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act and detailed procedure has been prescribed for recording the name of the raiyat i.e. his right, title and interest in the register and the Consolidation authority already recorded the right, title and interest to the extent of 2/3rd share over the disputed lands and in view of Section 14 of the said Act the opposite party shall be entitled to possession in respect of the lands allotted to him. Furthermore, Section 37 of the Act already prescribed that no Civil Court shall entertain any suit or application to vary or set aside any decision or order passed under this Act. Under Sections 37-A and 37-B the Deputy Director of Consolidation, Director of Consolidation and other authorities were declared to be the Courts of competent jurisdiction and shall have all such powers and privilege of a Civil Court. So it is clear that the decision of the Consolidation Officer has overriding effect and this also cannot be challenged in a Civil Court. Moreover, it is settled principle of law that in a proceeding under Section 145, Cr. P.C. the Magistrate is only required to declare as to which of the party is entitled of possession of the disputed property and he has to decide the dispute of possession primarily for the purpose of maintaining peace.

11. In that view of the matter if the decision of the Consolidation Officer cannot be challenged in a Civil Court then the Magistrate while deciding a proceeding under Section 145, Cr.P.C. cannot ignore the decision of the Consolidation Officer, and more or less the decision is binding on him. Similar view was taken by a Division Bench of this Court in Crl. Rev. No. 197/83- Nagendra Narayan Prasad v. Lakshman Goswami in 1984 BBCJ 316. Relied upon this decision the single Judge of this Court in a case 1987 BLJ 281; 1986 PLJR 1176-Subhash Prasad Singh v. The State of Bihar and Ors. had gone further and came to the conclusion that on a plain reading of Sections 37 and 39 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 it is manifest that the

decision of the Consolidation Officer cannot be challenged in any Civil Court and for that sense it is final and in such situation if the decision is in favour of any party to a proceeding under Section 145, Cr. P.C. then the Executive Magistrate cannot ignore and to respect the order passed by Consolidation authorities and the order initiating proceeding under Section 145, Cr. P.C. is to be quashed.

12. In view of the decisions of this Court, as mentioned above, and for the reason that the Supreme Court in a case : AIR 1985 SC472 -Ram Sumer Puri Mahant v. The State of Bihar and Ors. observed that when a civil litigation is pending for some property wherein the question of possession is involved and the parties are in a position to approach the Civil Court for interim order such as injunction etc. for adequate protection of the property then there is no justification for initiating a parallel criminal proceeding under Section 145, Cr. P.C. and multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over the meaningless litigation. Now it can be said that for the reasons above, the continuance of Section 145, Cr. P.C. proceeding is apparently not permissible and it will only amount to multiplicity of litigation and as such the learned Executive Magistrate was perfectly justified in dropping the proceeding vide the impugned order.

13. Under the circumstances, in my considered opinion, there is no merit in this application and as such this application is dismissed but both the parties will bear their own cost.