

Deomani Sharma Vs. State of Bihar and ors.

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Court : Patna

Decided On : Apr-24-1995

Judge : S.K. Chattopadhyaya, J.

Appeal No. : Cr.W.J.C. No. 560 of 1993 (R)

Appellant : Deomani Sharma

Respondent : State of Bihar and ors.

Disposition : Application Dismissed

Judgement :

S.K. Chattopadhyaya, J.

1. In this writ application, being aggrieved by the order dated 8/10/93 passed by the learned court below in Cr. Revision No. 226/90 by reason of which the said revision preferred by the petitioner was dismissed, the petitioner has moved this Court.

2. Before considering the grievance of the petitioner a potrya of the background of facts is necessary: The dispute between the petitioner and respondent No. 2 is in respect of a piece of land appertaining to plot No. 27, Khata No. 17 situated at Jharudih in the district of Dhanbad. In respect of the same land a proceeding under Section 145 Cr. P.C. was initiated between the parties and by order dated

20.8.93 possession of the wife of the petitioner, namely, Smt. Urmila Devi, was declared by the court below. It is not in dispute that against the said order respondent No. 2 moved this Court in revision which was, ultimately, allowed to be withdrawn. After withdrawal of the revision, respondent No. 2 filed title suit No. 54/91 which is pending before the competent court.

However, in respect of the disputed land title suit No. 281/78 was filed by the younger brother of the petitioner namely. Ram Pravesh Sharma for declaration and confirmed of possession in respect of the said land. By judgment and decree dated 5.6.84 the competent civil court declared the right, title and possession of the brother of the petitioner. Against that judgment the respondents preferred appeal before the District Judge. The same was allowed by setting aside the judgment of the trial court on the ground of under valuation of the suit property itself. The matter was remitted back to the trial court. However, again by judgment dated 26.11.93 the said suit was decreed in favour of the brother of the petitioner. It is not in dispute that respondent No. 2 again filed first appeal before the learned District Judge, Dhanbad which is still pending.

3. It appears that again, proceeding under Section 144 Cr. P.C. was initiated and notices were issued to both the parties. On consideration of the show cause, the proceeding was converted into a proceeding under Section 145 Cr. P.C. At that juncture the petitioner filed an application before the court with a prayer to drop the proceeding. inter alia on the ground that the possession in respect of the disputed land what been declared by a competent civil court in favour of the brother of the petitioner and, as such, the said 145 Cr. P.C. proceeding was not maintainable. By an order dated 23.6.90 as contained in Annexure-4, the learned Sub-Divisional Magistrate rejected the said application of the petitioner. Being aggrieved, the petitioner moved the revisional court in Cr. revision No. 226/90 and by the impugned order dated 8.10.93 the learned revisional court dismissed the said revision application holding that the order impugned before the revisional court was an inter-locutory order. However from the perusal of the impugned order it appears that even though the revisional court dismissed the said revision application but he has given liberty to the petitioner to raise the points which were taken before the revisional court and it was further observed that the Sub-

Divisional Magistrate will consider afresh the entire materials brought on record by the parties to find out whether there had been orders of the competent court with regard to the disputed properties. The revisional court further observed that if there had been any such order in that case, the present proceeding under Section 145 Cr. P.C. could not be continued but that would happen only if the disputed property of the proceeding, in fact, constituted the same property in respect of which orders, if any, had been passed by the competent civil court earlier.

4. Learned Counsel for the petitioner has contended that on the basis of preponderance of materials on record, the revisional court has erred in law in dismissing the revision application. He submits that the learned Executive Magistrate should not have dismissed the petition by which a prayer for dropping the proceeding was made. In my view, the contention of learned Counsel for the petitioner is only to be noted and to be rejected. In my view by order dated 23.6.90 the learned Executive Magistrate has correctly held that as the maintainability matter was already decided by his predecessor on 28.9.89 and admittedly no revision against that order was preferred by the petitioner, that order becomes final. He has, in my opinion, under these circumstances, rightly rejected the petition filed by the petitioner. Similarly, in my view, the revisional court has also rightly dismissed the revision petition which was preferred against interlocutory order of the Executive Magistrate. Moreover, as the revisional court has given ample opportunity to the petitioner to place his case before the learned S.D.M. in my view no case has been made out for interference with the impugned order by this Court in its jurisdiction under Article 226 and 227 of the constitution.

5. In the result, this application is dismissed. Mr. Rajendra Prasad appearing on behalf of respondent No. 2 has submitted that taking into consideration the long pendency of the proceeding before the court below, direction should be issued for the early disposal of the same. In my opinion, the prayer justified. The learned S.D.M. Dhanbad is directed to conclude the proceeding as expeditiously as possible taking into consideration the age of the same. It is needless to say that while considering the case of the parties, the learned S.D.M. will not be prejudiced by this rejection order as well as the order passed by the revisional court.

