

Moti Ram and ors. Vs. Laxmi Narayan Jaishwal and ors.

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Court : Jharkhand

Decided On : Apr-03-2007

Reported in : [2007(4)JCR209(Jhr)]

Judge : D.G.R. Patnaik, J.

Appellant : Moti Ram and ors.

Respondent : Laxmi Narayan Jaishwal and ors.

Disposition : Application allowed

Judgement :

D.G.R. Patnaik, J.

1. Petitioners by filing the instant revision application, have challenged the order dated 24.1.1997 passed by the learned Sub-Divisional Magistrate, Chatra in a proceeding under Section 145, Cr PC vide case No. 87 of 1995, T.R. No. 55 of 1997, whereby the possession of the opposite-parties No. 1 to 3, who were the members of the first party in the said proceeding, over the disputed land was declared and the present petitioners who were the members of the second party, were restrained from entering into the said land. The dispute between the parties is related to a piece of land measuring 16.64 acres. Both parties have advanced their respective claims of title and possession over the disputed land. A series of litigations in respect of the said land was contested between the parties.

2. In course of inquiry under Section 145, Cr PC, both parties were directed to adduce their respective evidences. By the impugned order dated 24.1.1997, the learned Court below passed the final order declaring possession of opposite-party Nos. 1 to 3 over the disputed land.

3. Petitioners have challenged the impugned order basically on the ground that it was passed by the learned trial Court in abject haste and without conducting a fair trial and without affording adequate opportunity to the petitioners to adduce their evidences. In order to demonstrate the points, learned Counsel for the petitioners refers to certain orders of the lower Court records. Beginning with the order dated 9.8.1996, learned Counsel explains that the records pertaining to the proceeding was received in the learned Court below on transfer from the Court of Sub-Divisional Magistrate on 9.8.1996, whereafter the first party/opposite-parties was called upon to adduce their evidences. During the period between 9.8.1995 to 20.1.1997, as many as 35 adjournments were granted to the first party to adduce their evidences. Ultimately, after having availed full opportunity, the first party closed' their evidences on 20th January, 1997 and on being called upon to adduce evidences, the petitioners/second party examined one witness on their behalf. On the following day, the case was posted for adducing further evidence of the petitioners-second party, but the petitioners sought for adjournment to adduce their evidences which was allowed by the trial Court and the case was posted for evidence on 24.1.1997. Referring to the order elated 24.1.1997, learned Counsel explains that on that date, the petitioners had filed attendance of as many as four witness, but on account of the face that the Presiding Officer was engaged in law and order duty, the matter was not taken up and none of the witnesses could be examined on that day. On the following day i.e. on 25.1.1997 petitioners again produced their witnesses along with a list of five witnesses, but to their utter surprise, they came to know that on the previous day i.e. 24.1.1997 the trial Court had recorded the impugned order disposing of the proceeding while declaring the possession of the opposite-party over the disputed land. Learned Counsel explains that it would be apparent from the above that even though the case was posted for adducing evidences on behalf of the petitioners on 24.1.1997, none of the witnesses produced was examined, nor was the case fixed for hearing final argument and even without hearing the parties, the learned Court below

proceeded to record the final order on the same day apparently behind the back of the petitioners and the aforesaid facts clearly indicate that the final order was passed in haste and in a manner which is extremely prejudicial in the interest of a fair trial.

4. Learned Counsel for the opposite-parties, on the other hand, while refuting the grounds advanced by the petitioners, submits that it is totally wrong to say that the petitioners were not afforded any opportunity to adduce their evidences. In fact, the petitioners were afforded opportunity and they had availed the said opportunity by adducing documentary evidence on their behalf and since the dispute between the parties relates both to claim of title as well as possession, the learned Court below had rightly proceeded to record its finding on the basis of the documents adduced by both the parties. Learned Counsel while referring to the judgment of Patna High Court, reported in 1998 (1) East Cr. Cases 414 (Pat) Jhalo Devi and Ors. v. Jagannath Mondal, submits the Magistrate conducting inquiry under Section 145, Cr PC, need not advert to the oral evidence, if documentary evidences are available on record and is sufficient to decide the issue in the proceeding concerning the dispute between the parties.

5. From perusal of the orders to which attention has been invited by the learned Counsel for the petitioners, it is apparent that though the case was fixed for adducing evidence on behalf of the petitioners-second party and as many as four witnesses were produced on the date fixed i.e. 24.1.1997, but none of the witnesses were examined by the Court. The order dated 24.1.1997 indicates that in fact, the case could not be taken up for hearing on account of the engagement of the Presiding Officer in law and order duty. It is apparent therefore that the petitioners were neither given an opportunity for adducing evidences on their behalf, nor was any opportunity given to them for being heard in respect of their case before passing the final order in the proceeding. The contention of the learned Counsel for the petitioners that the learned Court below had passed the order behind the back of the petitioners and in haste, has been successfully demonstrated by the petitioners.

6. Judgment cited by the learned Counsel for the opposite-parties does not appear to be wholly relevant in the facts of the instant case, since in the case referred to, the parties had adduced oral evidence also besides the documentary evidence and the concerned Court had placed greater reliance on the documentary evidence than on the oral evidence. In the instant case, except one witness, the petitioners/second party were not allowed to adduce any other witness at all and, therefore, there was abject failure on the part of the inquiring Magistrate to collect evidences at the time of inquiry from both the parties.

7. I find merit in this application. Accordingly, the same is allowed. The order dated 24.1.1997 passed by the Sub-Divisional Magistrate, Chatra in Case No. 87 of 1995 (T.R. No. 55 of 1997) is hereby set aside.

8. Learned Counsel for the opposite-parties submits with reference to a decision of the Supreme Court that the dispute between the parties concerning the land under reference, has been continuing since 1995 and both parties are claiming title and possession over the same and since the dispute between the parties could not be decided even during the past 15 years, it would be appropriate to refer the matter to the civil Court for a final decision on the dispute between the parties concerning the land.

9. Learned Counsel for the petitioners also acknowledges the proposal advanced by the learned Counsel for the opposite-parties and submits that it would perhaps be the best possible course to refer the dispute between the parties to the civil Court for final adjudication.

10. This Court also finds that since the dispute between the parties has been lingering for several years and their dispute could not be resolved in earlier proceedings under Sections 144 and 145, Cr PC contested by them on previous occasions, referring the present proceeding back to the learned Court below for fresh adjudication on the dispute by passing a fresh order in the proceeding, would only protract the litigation. As such, this Court does not feel inclined to pass any order apart from setting aside the impugned order of the learned Court below. The parties shall be at liberty to refer their dispute concerning the land to the competent civil Court for final adjudication.

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