

Basanti Devi. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Sep-30-2010

Judge : Akhilesh Chandra, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 467, 468, 34, 144, 145

Appeal No. : RIMINAL MISCELLANEOUS No.25449 OF 2006

Appellant : Basanti Devi.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mr. Damodar Prasad Tiwary, Adv.

Advocate for Pet/Ap. : Mr. Devendra Kumar Sinha; Mr. Ambika Bhagat; Mr. Kamal Kr. Sinha, Advs.

Judgement :

1. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.
2. Perused supplementary affidavit filed on behalf of learned counsel for the petitioner. None turned up on behalf of learned counsel for the complainant opposite party no.2 in spite of appearance in the case much before.

3. This is an application under section 482 of the Criminal Procedure Code seeking quashing of order dated 10.06.2005 passed in Complaint Case No. 443/2003/858/2006 by learned S.D.J.M. Jehanabad taking cognizance of the offence under sections 467, 468/34 of the Indian Penal Code.

4. The complainant opposite party no.3 filed the complaint with assertion that in the year 1960, five decimals of land was purchased, out of which over four decimals land house was constructed, remaining was left for kitchen garden, but on 08.11.2002, the petitioner arrived and tried to make construction by taking possession, on objection, it reveals that he also got a sale deed with respect to one decimal land left over as early as in the year 1992. So, averting that in face of earlier transfer subsequent sale deed is nothing but a fraudulent act. After investigation and inquiry cognizance was taken which is under challenge.

5. Learned counsel for the petitioner submitted that between the parties earlier there was proceeding under sections 144 and 145. It has already been held that they are in possession of their respective lands and in fact there is no clash of interest. It is pointed out that the complainant had already filed Title Suit No. 3/2004 before the Munsif, Jehanabad, and declaration as regard to fraudulent nature of the sale in favour of the petitioner but, in spite of preceding the suit ex parte. It has been dismissed vide order dated 01.11.2007.

6. From the order also it appears that there was a direction by competent court to get the land in question measured scientifically to ascertain actual state of affairs at the spot, but nothing of the kind was done. The dispute between the parties is of purely civil nature. Learned Additional Public Prosecutor after initial hesitation concedes the submissions that averments made in the complaint also speaks that the case is of purely civil nature as the disputes centres on with the two transactions and the land, if any, left over by the complainant.

7. Considering the facts and circumstances and dismissal of suit, the impugned order is hereby quashed and application stands allowed.