

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Revision No. 196 of 2014

Siya Sharan Prasad

... .. Petitioner

Versus

1. The State of Jharkhand

2. Kedar Prasad Sinha

3. Sarwan Kumar

... .. Opp. Parties

CORAM : HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner

: Mr. Mahesh Tewari, Advocate

For the State

: Mrs. Laxmi Murmu, A.P.P.

For the O. P. No. 2

: Mr. Niranjana Singh, Advocate

C.A.V. on 13.09.2019

Pronounced on 28.09.2019

The instant application is directed against the order dated 13.01.2014 passed by the learned Executive Magistrate, Dhanbad in M. P. Case No. 779 of 2007 passed under Section 147 Cr.P.C., whereby the learned court below has held that the claim of second party-opposite parties on the disputed path is proved and directed that the first party-petitioner shall not make any interference on the claim of the second party-opposite parties.

The instant case has a chequered history. The petitioner has purchased 5 kathas of land in the name of his wife-Jai Rani Devi, in Plot No. 509, Katha No. 29, Mouza - Bishunpur, Mouza No. 5 within the district of Dhanbad from one Pradip Kumar Lala. The second party-opposite parties purchased land just adjacent to Eastern side of the land of the first party-petitioner and the vendor of the opposite parties provided 10 feet wide Rasta for the use of all.

It has been alleged by the first party-petitioner that the opposite party nos. 2 and 3 by demolishing the Eastern boundary wall encroached and erected their own wall and at the same time, the Western side of the above said path was closed down by them. The petitioner facing trouble in using Aam Rasta objected the said act of the opposite parties and some quarrel erupted between the parties and the matter was reported to the SDO, Dhanbad and to the Police. When no action was taken then the first party-petitioner filed the petition under Section 147 Cr.P.C. before the SDM, Dhanbad for drawing up proceeding against the opposite party nos. 2 and 3.

Pursuant to the said petition, the learned SDM, Dhanbad called for a report from the Circle Officer, Dhanbad as well as Dhanbad Police. The Circle Officer, Dhanbad submitted its report dated 14.06.2007 and the Dhanbad Police submitted its report on 22.06.2007. On the basis of the said reports, the learned SDM, Dhanbad draw the proceeding against the opposite parties. Pursuant to that both the parties appeared before the court below and adduced their documents and, thereafter, the present proceeding was transferred to the Executive Magistrate, Dhanbad for disposal of the case.

Both the parties adduced their evidences and submitted their documents. Based upon the evidences laid before him, the learned Executive Magistrate passed the order which has been impugned in the instant application.

Mr. Mahesh Tewari, learned counsel for the petitioner submits that the learned Executive Magistrate has erred in giving finding to the effect that the claim of the opposite parties on the disputed land is proved and the witness of the second party-opposite parties have also accepted the claim of the opposite parties and further erred in directing the petitioner not to make any interference on the claim of the second party-opposite parties. He further submits that the learned Executive Magistrate has ignored the earlier report of the Circle Officer, Dhanbad dated 14.06.2007 and the Police report dated 22.06.2007 and he has committed an error in again calling report from the Circle Officer, Dhanbad though he was not having such power. He further submits that the learned Executive Magistrate has neglected to see that how and by which order, report dated 30.01.2008 came on record because from the entire order which shall appear that no such report has been asked for. He further submits that the learned court has mentioned the list of documents of both the parties but failed to take into consideration in the impugned order. He finally concluded by submitting that the order passed by the Executive Magistrate is bad in the law and perverse in nature, inasmuch as, the learned court below has failed to apply the necessary ingredients as laid down in sub-section (2) of Section 148 Cr.P.C. which led the order in-correct, illegal and improper.

Per contra, Mr. Niranjana Singh, learned counsel appearing for the opposite parties submits that the land purchased by the opposite parties are surrounded by boundary wall and prior to purchase of the land by the second party-opposite parties, first party-petitioner use this as path and one Narendar Kumar Sharma-vendor of the land and the second party-opposite parties clearly stated that the boundary in Western and Northern sides is towards the land of Nilima Kumari and Kedar Prasad Sinha and they are entitled for the boundary and the path on the plot meant only for use of Kedar Prasad Sinha, Nilima Kumari, Birendra Prasad and B.D. Mishra. He further submits that the enquiry conducted by Circle Officer, Dhanbad clearly transpires that vendor- Narendar Kumar Sharma sold the land to Kedar Prasad Sinha by Registered Sale Deed No. 1769 dated 04.03.2005 to Asha Prasad by Registered Sale Deed No. 1771 dated 04.03.2005 to Nilima Kumari by Registered Sale Deed No. 1768 dated 04.03.2005 and to Chinmay Mishra by Registered Sale Deed No. 1774 dated 06.03.2006 and the vendor left seven feet land and each vendee left 1 and ½ feet land i.e. in total 10 feet land for their personal use as path and disputed path has never been used by the first party-petitioner and first party-petitioner use Pacca Rasta towards Northern side which ends in Main Road and as such the first party-petitioner has no right and title over the disputed land and the disputed land is being used by four persons/opposite parties. He further submits that without any rhyme and reason the first party-petitioner created disturbance in the private path of the opposite parties. He concluded his argument by submitting that the instant application is not maintainable when the enquiry report reveals the true facts and the disputed path is beyond the boundary wall of the petitioner and the petitioner is using path in Northern side, he should not be allowed to use another path in private land of the opposite parties.

Having heard learned counsels for the parties and perusing the materials available on record, it appears that the learned Executive Magistrate, Dhanbad has meticulously dealt with the evidences and came to the conclusion that the second party-opposite parties have

valid claim over the disputed path. It appears from the report of the Circle Officer dated 14.06.2007, 13.01.2008 and 23.08.2013 that part of the land measuring an area of 19 Khatas under Mouza – Bishunpur, Khata No. 29, Plot No. 509 was purchased by Kedar Prasad Sinha, Asha Prasad, Nilima Kumari, Chinmai Mishra from vendor-Narendra Kumar Sharma. 10 feet land was left for the use as the path. Out of 10 feet, 7 feet land was given by the seller and 3 feet land was given by each of the purchaser mentioned hereinabove i.e. total 10 feet land was left on their raiyati land for their use as path. The said report further reveals that the land of all four purchasers is inside the pacca boundary wall and there is land of Jai Rani Devi to its West, which is completely outside the boundary wall and the disputed path has never been used by her. The said report of the Circle Officer further reveals that the boundary wall was old and the same was given to the opposites parties by the seller. It further reveals from the report that 5 khata of land was purchased by the first party-petitioner which is shown in the Northern direction, which goes ahead with the main path. In this view of the matter, it clearly transpires that no title and interest arose for the first party-petitioner from the disputed path inasmuch as the disputed path situated to the Eastern boundary wall used by the four persons on raiyati land left by them.

The learned Executive Magistrate after going through the report of the Circle Officer, statement of witnesses, documents and certificates of the land purchased by the parties has come to the conclusion that the claim of the second party-opposite parties on the disputed path is proved and the witnesses have also accepted the claim of the second party-opposite parties. The learned Executive Magistrate has categorically held that the claim and title of the first party-petitioner is baseless. On the basis of the aforesaid discussions, the learned Executive Magistrate has directed the petitioner not to make any interference on the claim of second party-opposite parties and further that the order impugned shall be applicable till any further order is passed against the said order by any competent court.

It appears that the order impugned is well discussed on the basis of materials placed before him and there seems to be no illegality in the

said order so as to want any interference by this Court in its revisional jurisdiction. The learned Executive Magistrate has elaborately discussed the issue of path and came to a definite finding that in the Sale Deed No. 5172 dated 29.06.1979 and the petition, there is no distribution of path and attachment map also did not show any path whereas in the sale deeds of the opposite parties, path has been shown from the West to East and reach to common path and close on Western side. It is true, that the first parties use this as path for his convenience before the opposite parties purchased the land from vendor-Narender Kumar Sharma and the said sale deeds clearly indicates that all the vendee are entitled for boundary and the path on the plot is meant only for use of Kedar Prasad Sinha, Nilima Kumar, Birendra Prasad and B. D. Mishra. The learned trial court has categorically held on the basis of the evidences that the vendor of the opposite parties left 7 feet land and each of the opposite parties left land total measuring an area of 3 feet so that total 10 feet land were left for personal use for path and the disputed path has never been used by the first party-petitioner and the first party-petitioner use his own path towards Northern side which ends in the main road.

The Executive Magistrate after being satisfied from the report of the police officer and Circle Officer that the dispute is likely to cause a breach of peace regarding use of path which is claimed to be easement right, he inquired into the matter and after following due procedure as envisages under the law came to the specific finding of facts.

In view of the aforesaid discussion I hold that the learned Executive Magistrate after following due process of the law as enshrined in Section 147 Cr.P.C. passed the order. The petitioner has failed to point out any error in law so as to warrant any interference by this Court and as such I am not inclined to interfere with the order of the learned Executive Magistrate and the same is affirmed. The instant revision application is dismissed on contest.

Let the lower court record be sent back to the concerned court.

(Deepak Roshan, J.)