

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2487 of 2016

Rameshwar Mandal

..... Petitioner

Versus

1.The State of Jharkhand

2. Puran Chandra Mandal

..... Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Rajiva Sharma, Sr. Advocate

For the State : Mrs. Lily Sahay, A.P.P.

03/Dated: 31/08/2023

Heard Mr. Rajiva Sharma, learned senior counsel for the petitioner and Mrs. Lily Sahay, learned counsel for the respondent-State.

2. This criminal miscellaneous petition has been filed for quashing the order dated 04.10.2016 passed by the learned Sessions Judge, Dumka in Criminal Revision No. 34/2016 whereby the leaned Court confirmed the order under dated 25.04.2016 passed by the learned Sub-Divisional Magistrate, Dumka in Criminal Misc. Case No. 272 of 2015.

3. Mr. Rajiva Sharma, learned senior counsel for the petitioner submits that the O.P. No. 2-Puran Chandra Mandal who has filed the complaint petition has left for his heavenly abode for that one interlocutory application being I.A. No.807 of 2022 has been filed for substituting the name of legal heirs and successors of late Puran Chandra Mandal. He submits that the O.P. No.2 filed application to the Officer-in-Charge, Dumka (M) P.S. alleging therein that he was living in the house covering an area of 3 katha 3 dhur situated on J.B. No. 1668 in Old Dumka, Harnakundi Road and the petitioner is also living beside him and the petitioner has forcibly opened a door on a portion of his lands and has been trying to construct a "Chhaja" and on his protest he was abused and an attempt was made to assault by "Sabbal" but he was saved anyhow by Nagar Mandal and Kunj Bihari Mandal, who were present there. He submits that application was there alleging that "Chajja" was being constructed after opening the door on the portion of his lands. He submits that the Deputy

Commissioner vide letter dated 16.03.2015 directed the Superintendent of Police, Dumka and Sub-Divisional Officer, Dumka to take necessary legal action against the guilty person and after enquiry the allegation of forcible construction of 'Chhaja' by Rameshwar Mandal (petitioner) on the lands of Puran Chandra Mandal-O.P. No. 2. He submits that in view of that proceeding under section 107 of Cr.P.C. was initiated by way of Criminal Misc. Case No. 272/2015 and the said was converted into proceeding under section 147 of Cr.P.C. He submits that by order dated 25.04.2016 the Sub-Divisional Magistrate, Dumka disposed of the said proceeding under section 147 of Cr.P.C. and directed the O.P. No.2 to close the door opened by the petitioner and not to encroach upon the 'galli' of 85 feet long and 2 ½ feet wide and to remove the pipe line laid down by the petitioner in the 'galli'. He further submits that said order was challenged in Criminal Revision No. 34 of 2016 which was dismissed by order dated 04.10.2016. He submits that the revisional court has not appreciated the entire aspect of the matter in correct perspective and has dismissed the petition without giving any cogent reason. He further submits that all these orders of the learned Sub-Divisional Magistrate as well as learned Sessions Judge are perverse and in view of that order passed by the revisional court may be quashed.

4. Mrs. Lily Sahay, learned counsel for the respondent-State submits that it appears that learned Sessions Judge has applied its judicial mind and by cogent reason has dismissed the said petition. She submits that there is no illegality in the impugned order.

5. The Court has gone through the revisional order dated 04.10.2016 passed in Criminal Revision No. 34 of 2016 and finds that the learned court found that the learned trial court has gone through the report of the Circle Officer and also submission of both the parties to the effect that Puran Chandra Mandal is the bonafide possession of the said land and rightly held

that Ist party-Puran Chandra Mandal after constructing a house on Dag No. 1668 Rakwa 3 katha 3 Dhurs living there to which he received in B.P.P.H.T. Case No. 03/84-85 and also found that Puran Chandra Mandal has left a lane 2 ½ ft. x 85 ft. which was the part of his land i.e. 3 katha 3 dhurs. The Court further held that the land belongs to Puran Chandra Mandal but the petitioner-Rameshwar Mandal forcibly wants to create obstruction by laying plastic pipe and opening the door towards 'gali' and also wants to construct a 'Chhajja' in that land. The Court further recorded that Rameshwar Mandal has not filed any chit of paper regarding the lane to which he claims that is a common passage and common lane. The measurement made by Circle Office Amin was taken into consideration by the learned Court as well as learned revisional Court thereafter the said finding has been provided.

6. It appears that cogent reason has been given by the learned Sessions Judge in criminal revision. There is no perversity in the order passed by the learned Sessions Judge. If such a dispute is there, that proceeding cannot be decided in a emergent sections i.e. 144, 145 and 147 of Cr.P.C. and that can be subject matter of regular suit before the competent Court of jurisdiction. The Court further finds that this petition has been filed under section 482 of Cr.P. C. and if injustice is not done in the garb of section 482 of Cr.P.C, second revision is not maintainable Accordingly, this petition is dismissed. Pending I.A, if any, stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/