

Patna High Court

Babu Lal Rai vs Dhrubdeo Rai And Ors. on 23 July, 1999

Equivalent citations: 1999 (3) BLJR 1848

Author: S Katriar

Bench: S Katriar

JUDGMENT S.K. Katriar, J.

1. This criminal revision application is directed against the order dated 29-1-94, passed by Sri Purshottam Pd. Singh, Executive Magistrate Gopalganj, in case No. (T.R. No. 199/89), whereby he has bifurcated the disputed plot into three portions and declared possession of the first party (the petitioner herein), 2nd Party (O.P. No. 2 herein) and 3rd party (O.P. No. 3 herein) to the extent, of 5 Katha 18 dhurs each in a proceeding under Section 145 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code").

2. This unfortunate litigation between the agnates has had rather a chequered history. It relates to cadastral survey plot which is equivalent to R.S. plot No. 373, Khata No. 58, Village Gauri, police Station Mohammadpur, district Gopalganj, measuring a total area of 17 Katha and 15 Dhurs. Initially, a proceeding under Section 144 of the Code was initiated which was subsequently converted into one under Section 145 of the Code. The same was disposed of by the Executive Magistrate by his order dated 15-3-92 whereby possession of the petitioner herein with respect to the entire plot in question was declared. Aggrieved by the said order dated 15-3-92 O.P. Nos. 2 and 3 herein had jointly moved the learned Sessions Judge in Criminal Revision No. 102/92/28/92, which was allowed by Judgment 28/92 dated 8-6-93 and the entire matter was remitted back to the Executive Magistrate for afresh order in accordance with law. The petitioner herein had moved this Court in Criminal Revision No. 611/93 against the said order dated 8-6-93 of the Sessions Judge, which was dismissed by order dt. 22-9-93. Pursuant to the aforesaid remand order, the Executive Magistrate passed the impugned order dated 29-1-94, whereby he has held that the three parties are in possession of . 1/3rd portion each of the land in question according to a family partition and has declared possession in terms of Section 145 (4) of the Code accordingly.

3. While assailing the validity of the impugned order, learned Counsel for the petitioner in his persuasive argument has submitted that the impugned order is beyond the scope of Section 145 of the Code. Instead of confining himself to the scope of Section 145 of the the Code, he has taken upon himself the unauthorised duty of determining the title of the lands in question. In other words, in the submission of the learned Counsel, the impugned order amounts to determination of the question of title and possession of the parties which is completely alien to the scope of Section 145 of the Code. Learned Counsel for the petitioner while tracing the title and history of the land in question submitted that the trial Court has unauthorisedly held that the same belonged to the joint family instead of Sundar Mani Rai

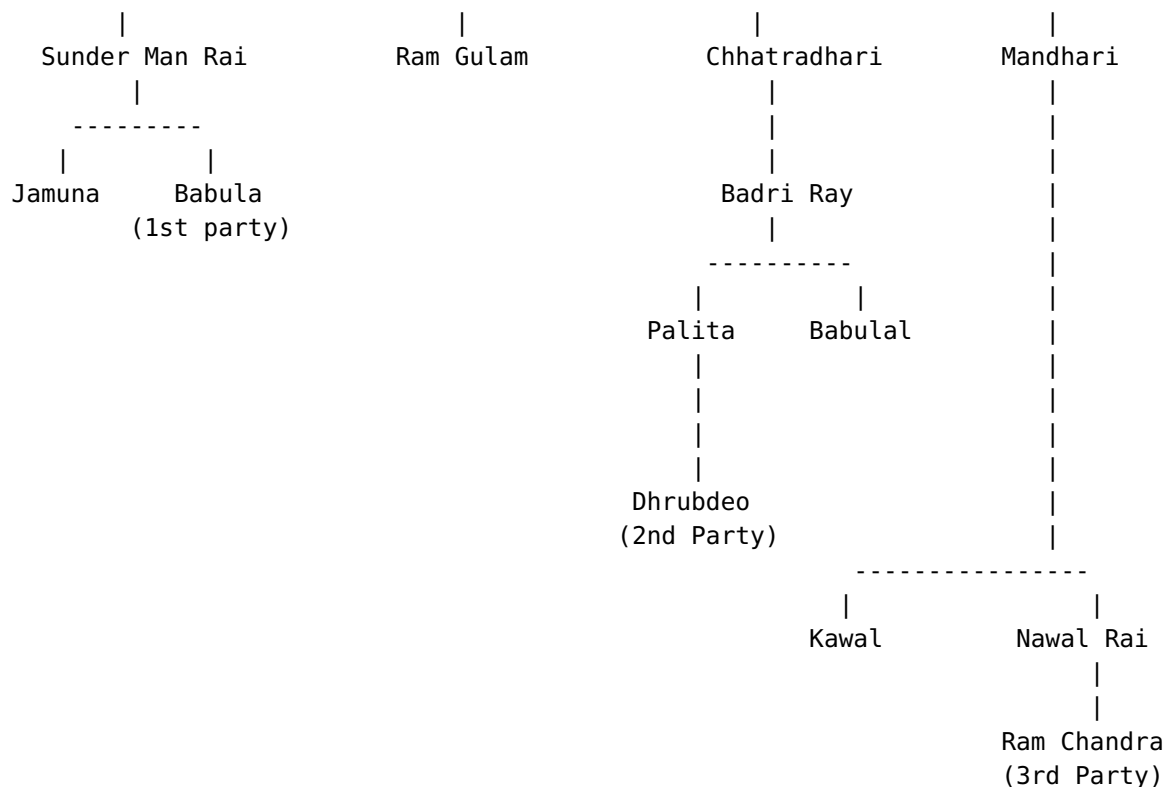
4. Learned Counsel for O.P. Nos. 2 and 3 submitted that in view of the nature of the dispute between the parties, the Magistrate has passed a just order which is entirely within the scope of Section 145 of the Code. The parties are agnates and are quarrelling with respect to their possession over the plot in question. In his submission, it is manifest from a plain reading of the impugned order that he

has not treated the proceeding in question as a partition suit. Ha has not partitioned the property in question and has examined this aspect of the matter incidentally and only with a view to determine the dominant question before him, namely, determination of the question of possession of the parties in terms of Section 145 of the Code.

5. Having considered the rival submissions, I am of the view that this criminal revision application has to be dismissed. The admitted genealogy of the parties is indicated in para 6 of the criminal revision application and is set out hereinbelow for the facility of easy reference.

Lal Badan Rai |

-----



The case of the petitioner is that the property in question was self-acquired property of Sundarmani Rai, his father, whereas the case of O.P. Nos. 2 and 3 is that it was a joint family property purchased in the name of Sundar Mani Rai because he was the Karta of the family. He was the eldest son of Lal Badan Roy. Counsel for O.P. Nos. 1 and 2 is, therefore, correct in his submission that the Magistrate has examined the question of acquisition of the property and the consequent partition only incidentally with a view to determine the question of possession in terms of Section 145 of the Code. It is manifest from a plain reading of the impugned order that he has not treated the proceeding as one under Section 145 of the Code. He has declared possession with respect to 1/3rd share each of the three parties and has taken care to give clear demarcation of the three sub-plots. He has also

taken care to observe in the impugned order that the parties shall not interfere with the possession of each other till such time this order is altered/modified by a Court of competent jurisdiction thereby making it clear that it is open to the parties to have their right and interest with respect to the suit land adjudicated by a Civil Court of competent jurisdiction. It is quite clear that the Executive Magistrate was mindful of the true scope and contents of Section 145 of the Code.

6. In the result, this criminal revision application is dismissed and the impugned order dated 29-1-94 passed by the learned Executive Magistrate, Gopalganj, in Trial No. 199 of 1989 is hereby upheld till such time, it is modified by a Civil Court of competent jurisdiction.