

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Second Appeal No. 170 of 2005

Shanker Mistry

.....Appellant

Versus

Shiv Narayan Mistry & Anr.

....Respondents

Coram: **HON'BLE MR. JUSTICE NARENDRA NATH TIWARI**

For the Appellant : Mr. Manoj Kumar Sah, Advocate

For Respondent no. 1 : Mr. Uday Kant Thakur, Advocate

I.A. No. 3085 of 2011

09/24.08.2012 In this Interlocutory Application filed under Order 39, Rule 2A of the Code of Civil Procedure, the respondent no. 1 has prayed for taking appropriate action against the appellant for breach of the order of status quo.

The allegation of respondent no. 1 is that in spite of the order for maintaining status quo passed by this Court dated 15.01.2010, the appellant has constructed pucca building over the disputed land in Dag No. 151. The son of respondent no. 1 reported this matter to the Sub Divisional Officer, Godda and requested for appropriate action against the said forceful dispossession by the appellant. The application before the Sub-Divisional Officer is Annexure-4 to this I.A. The respondent no. 1 has sought initiation of appropriate proceeding and for suitable action against the appellant.

The prayer has been opposed by the appellant by filing an affidavit in opposition. The appellant has flatly denied the said allegation and has stated that he has not breached the order of status quo and has not done anything to disturb the respondent no. 1. It has been further stated that the respondents have falsely claimed that they were in peaceful possession. As a matter of fact, the appellant has been in peaceful possession all along till date and he has been paying rent in respect to the land in question. The respondent no. 1 had tried to claim possession by executing a Bhugut Banda mortgage in favour of one Srikant Yadav, son of Maini Yadav, resident of Kuraba, P.S. Godda, District-Godda, with respect to the land in question. The appellant had filed petition before the Sub Divisional Officer, Godda requesting him to cancel the said Bhugut Banda Dastabej No. 202. After hearing the parties and proper enquiry, learned Sub Divisional Officer, Godda cancelled the Bhugut Banda Dastabej No. 202 by order dated 17.07.2010. Learned Sub-Divisional Officer has passed the order after being satisfied that the

appellant has been in possession of the land.

Learned counsel appearing on behalf of the appellant submitted that the respondent no. 1 has filed a frivolous petition only in order to unnecessarily put the appellant to loss and harassment. The application is liable to be rejected.

I have heard learned counsel for the parties and considered the facts appearing on record as also the submissions made by them. On perusal of the record of this appeal, I find that by order dated 15.01.2010, the appeal was admitted for hearing after framing substantial question of law. On application filed by the appellant, the court had also passed an order of status quo existing on that date. However, I find no finding or observation regarding possession or status of the parties existing as on that date.

There is nothing on record also to show that the status of possession was admitted by the parties. In the instant application, the respondent no. 1 has claimed that the appellant has breached the order of status quo, but the same has been emphatically denied by the appellant. The appellant has also brought on record the order of S.D.O. dated 17.07.2010 and the rent receipts and other documents in support of his claim, whereas the respondent no. 1 has brought on record a copy of the complaint made before the police. No document has been brought on record by the respondent no. 1 to show that he was in possession of the land in question on the date when the order of status quo was passed by this court.

It is well settled that provision of Rule 2 (A) of Order 39 C.P.C. is penal in nature and the party who makes an allegation of breach of any order and prays for taking action on that ground, has to make out a clear case and substantiate the same.

After going through the records and hearing counsel for the parties, I find no clear case made out for initiating proceeding and punishing the appellant under the provision of Order 39, Rule 2(A) of the Civil Procedure Code.

Therefore, there is no merit in this I.A. and the same is accordingly rejected.

(Narendra Nath Tiwari, J)