

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 3001 of 2017

1 (a) Mili Banerjee, wife of late Barid Baran Banerjee

1 (b) Tirthanjan Banerjee, son of late Barid Baran Banerjee

1 (c) Nilanjan Banerjee, son of late Barid Baran Banerjee

All are residents of Lepo Road (Main Road), Opposite Tower No.1, in
the town of Hazaribagh, P.S.-Sadar, P.O. & Dist.-Hazaribagh

.... Petitioner

Versus

1. The State of Jharkhand

2. Pradeep Bhardwaj, son of late Ram Sharan Beltharia, Managing
Director, Maa Chhinmastika Sponge Iron Limited, resident of
Ranchi Road, P.O. & P.S.-Ramgarh, Dist.-Ramgarh

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner	 : Mr. D.K. Chakraverty, Advocate : Mr. Ramesh Kumar, Advocate : Ms. Neelam Kumari, Advocate
For the State	: Mrs. Nehala Sharmin, Spl. P.P.
For O.P. No.2	: Mr. Sidhartha Roy, Advocate : Mr. Gaurang Jajodia, Advocate : Mr. Shashi B. Sah, Advocate

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By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 of Cr.P.C. with the prayer to quash the order dated 31.07.2017 passed by the learned Sessions Judge, Ramgarh in Criminal Revision No. 64 of 2016 by which the learned Sessions Judge, Ramgarh has set aside the order dated 04.10.2016 passed by the S.D.M., Ramgarh in Case No. 04 of

2005, whereby and where under, the S.D.M., Ramgarh allowed the demarcation of the land of the petitioner of his easement.

3. The brief fact of the case is that the original petitioner of this criminal miscellaneous petition who has since been substituted by his legal representatives upon his death in this criminal miscellaneous petition, filed an application in the court of S.D.M., Ramgarh on 19.07.2005 for initiating a proceeding under Section 147 of Cr.P.C. for removal of obstruction and restoration of right of easement over the land bearing plot no. 1423 situated at Village- Marar, P.S. and District-Ramgarh. On the basis of the said application the said proceeding under Section 147 of Cr.P.C. was initiated. After receipt of the said notice, the second party to the said proceeding, who is the opposite party no.2 of this criminal miscellaneous petition, put his claim over the land. During the pendency of the said proceeding under Section 147 of Cr.P.C. in Case No. 04 of 2005 the original petitioner of this criminal miscellaneous petition, who was the first party in the said proceeding filed an application on 06.09.2016 to issue direction to the circle officer for demarcation of the land by the government amin. The S.D.M., Ramgarh allowed the said petition without giving any opportunity of being heard to the second party.

4. Being aggrieved by the said order, the second party filed Criminal Revision No. 64 of 2016 which was heard and disposed of by the learned Sessions Judge, Ramgarh by the impugned order. The learned Sessions Judge, Ramgarh considered that on 04.10.2016 the S.D.M., Ramgarh gave last opportunity to cross-examine the witness

no.3 and the next date was fixed to 29.10.2010 but on the same day i.e. on 04.10.2016 the S.D.M., Ramgarh also passed the order directing the amin for demarcation of the land as prayed for by the first party in the proceeding on 06.09.2016 without giving any opportunity of being heard. Accordingly, as the said order impugned before the learned Sessions Judge, Ramgarh was passed in violation of principle of natural justice, hence, the learned Sessions Judge, Ramgarh set aside the order dated 04.10.2016 so far as it relates to the order directing the circle officer for demarcation of the land by the government amin and remanded back the case to the court below to pass a fresh order in accordance with law.

5. It is submitted by the learned counsel for the petitioners that after evidence of DWs the S.D.M., Ramgarh passed the order on 05.10.2016 to demarcate the land in question. It appears to be a printing error in paragraph no. 14 of this criminal miscellaneous petition as in the said paragraph no.14, it has been mentioned that the certified copy of the order concerned is dated 04.10.2016. It is next submitted by the learned counsel for the petitioners that the learned Sessions Judge, Ramgarh passed the impugned order purely on the basis of surmises and conjectures. Hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.

6. The learned Spl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently oppose the prayer and submits that the undisputed fact remains that vide order dated 04.10.2016, S.D.M., Ramgarh allowed the application of the first party to the

proceeding dated 06.09.2016 behind the back of the second party, without giving any opportunity of being heard; so, the said order having been passed in violation of principle of natural justice, no illegality has been committed by the learned Sessions Judge, Ramgarh in setting aside the said order. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

7. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that the undisputed fact remains that S.D.M., Ramgarh passed the order dated 04.10.2016 without giving any opportunity of being heard to the second party in respect of the said application filed on 06.09.2016 by the first party; behind the back of the second party. It is needless to mention here that principle of natural justice is a fundamental principle of judicial procedure and when the order impugned before the revisional court was passed in violation of such principle; such order having been set aside by the learned Sessions Judge, Ramgarh, this Court do not find any justifiable reason to interfere with the said impugned order passed by the learned Sessions Judge, Ramgarh in exercise of the power of this Court under Section 482 of the Code of Criminal Procedure.
8. Accordingly, this criminal miscellaneous petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)