

MANU/BH/0088/1962

Equivalent Citation: AIR1962Pat334

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Misc. Judicial Case No. 420 of 1961

Decided On: 24.01.1962

Appellants: **Mulakchand Mahton and Ors.**
Vs.

Respondent: **Mundrika Prasad Sinha**

Hon'ble Judges/Coram:

S.C. Mishra, Udai Sinha and S.P. Singh, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Indra Bhanu Singh, Adv.

For Respondents/Defendant: Brajeshwar Prasad Sinha and B.P. Samaiyar, Adv.

Bar Council: A.C. Sinha, Adv.

JUDGMENT

1. This is a proceeding started against Sri Mundrika Prasad Sinha, Advocate, at the instance of two persons, Trilokchand Mahton and Mulukchand Mahton, who along with one Jadu Mahton were parties to a land acquisition case, as some land belonging to them was acquired by the State of Bihar under the Land Acquisition Act. It may be stated that Trilokchand Mahton and Mulukchand Mahton were the mortgagors of the property acquired by the State and Jadu Mahton was the mortgagee. Under the Collector's award a sum of Rs. 4,820-13-0 was adjudged as payable to the persons interested in the land as compensation. The mortgagee, Jadu Mahton, claimed a sum of Rs. 1,800/- as the principal and Rs. 105/- as the money value of the standing crop on the land in question. The persons interested in the land, namely, Trilokchand Mahton, Mulukchand Mahton and Jadu Mahton were not satisfied with the amount under the Collector's award Payable to them as also for apportionment under Section 30 and accordingly, they petitioned for having the matter considered by the District Judge and the case was referred accordingly under Section 18 of the Land Acquisition Act to the District Judge of Patna. It was disposed of by the learned Additional District Judge. That court, on a consideration of the contention raised on behalf of the parties, raised the amount payable to these persons to a sum of Rs. 2,012-8-0.

The State of Bihar preferred First Appeal No. 325 of 1956 against the decision of the learned Additional District Judge. The appeal filed by the State, however, was withdrawn on the 27th of August, 1958. It appears that the petition for withdrawal was made by virtue of a compromise entered into between the State and the persons interested in the land aforesaid, by which the additional amount awarded by the learned Additional District Judge was scaled down and in terms of the petition of compromise, D/- 1-9-1955 the mortgagee, Jadu Mahton, was held entitled to a sum of Rs. 1,800/- and the balance was to be paid to Trilokchand Mahton and Mulukchand Mahton in equal proportion, It appears, further that Jadu Mahton had already withdrawn the amount of Rs. 1,800/- to be paid to him.

The balance amount was subsequently withdrawn by the Advocate concerned, Sri Mundrika Prasad Sinha. Accordingly, on the 2nd of March, 1959, a notice was served on him containing the signatures of Jadu Mahton, Mulukchand Mahton and Trilokchand Mahton through an advocate, Sri Yogeshwar Prasad Sinha, calling upon Sri Mundrika Prasad Sinha to pay the amount to them. The reply of the advocate, Sri Mundrika Prasad Sinha was to the effect that the amount withdrawn by him was duly paid to Jadu Mahton. In the circumstances, as controversy arose between the advocate and his clients as to whether the amount withdrawn by him in the land acquisition case in which he appeared for them was duly paid to Trilokchand Mahton and Mulukchand Mahton, a charge was drawn up against the advocate in the court of the Additional District Judge on the 8th of July, 1959 under the Legal Practitioners Act, Since Sri Mundrika Prasad Sinha is an advocate and as such not amenable to the provisions of the Legal Practitioners Act, the charge was dropped.

2. The stand taken by the advocate was that he had paid the sum withdrawn by him to Jadu Mahton because it was he who instructed him in the case on behalf of all the three persons including himself and accordingly he was under the impression that he was the person to whom the payment would be made and this would amount to payment to his clients. It would be thereafter a matter of adjustment between him and Trilokchand Mahton and Mulukchand Mahton with which the advocate was not concerned. He referred further to a receipt granted to him by Jadu Mahton, the mortgagee, in respect of the amount received by him duly from the advocate. The receipt bears the date 3rd of October, 1956.

3. Mr. Indra Bhanu Singh, appearing for Trilokchand Mahton and Mulukchand Manton has urged before us that the conduct of the advocate should be treated as misconduct in the circumstances of the case, inasmuch as, although he claims to have paid the amount to Jadu Mahton, in fact, he had no justification for doing so, inasmuch as the advocate knew fully well that Jadu Mahton was a mere mortgagee whose claim was limited to a sum of Rs. 1,800/-, the principal of the mortgage, and he was the mortgagee in possession of the land and so the question of any interest would not arise in the case. Apart from that, the petition which was filed before the learned Additional District Judge containing the terms of the compromise arrived at between these three persons on one side and the State of Bihar on the other, contains a clear recital that Jadu Mahton would not be entitled to anything beyond a sum of Rs. 1,800/-, and the balance of the amount was to go to Trilokchand Mahton and Mulukchand Mahton, the two mortgagors, who had a moiety interest each in the mortgaged property. The advocate signed this petition duly and, in the circumstances there was no warrant for him to have paid the amount to Jadu Mahton, as he purported to do.

He has raised further a question that the amount, in fact, was not paid to Jadu Mahton as he also signed the notice served on the advocate on the 2nd of March, 1959, along with Mulukchand Mahton and Trilokchand Mahton. Learned counsel for Sri Mundrika Prasad Sinha has, however, urged that the payment in the circumstances would be valid, and, in any case, no question of misconduct arises, because the payment must be considered as bona fide in any view of the matter. In the circumstances, we asked learned counsel for Sri Mundrika Prasad Sinha as to whether his client, Mr. Mundrika Prasad Sinha would see his way to get the amount re-deposited in the court of the Additional District Judge, wherefrom it was withdrawn by Sri Mundrika Prasad Sinha, because in the circumstances of the case, it might be regarded in any case as a mistaken payment. A query was made in general terms without any positive conclusion in the matter.

Mr. Brajeshwar Prasad Sinha, appearing for Sri Mundrika Prasad Sinha, informs the Court today that in the circumstances, his client would like to have the amount refunded by Jadu Mahton to whom he made the payment and to have it deposited in the Court of the learned Additional District Judge, and, that he undertakes to have the deposit made by the 28th of February, 1962. Accordingly, it appears to us to be unnecessary to pursue this matter further. The proceeding is dropped.

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