

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29 of 2015

Arising Out of PS.Case No. -1830 Year- 2013 Thana -WEST CHAMPARAN COMPLAINT

District- WEST CHAMPARAN (BETTIAH)

- =====
1. Banka Sah, son of Chandrika Sah, resident of village-Barwa Barauli, P.S.-
Shikarpur, District-West Champaran.
 2. Musmat Inarwati Devi, wife of Late Babulal Prasad Sah
 3. Rajesh Prasad Gupta, son of Late Babulal Prasad.
Both resident of village-Mathia, P.S.-Shikarpur, District-West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sk. Ayub, son of Late Sk. Islam, resident of village-Rampur Tola,
Ammaghawd, P.O.-Bhadiharwa, P.S.-Shikarpur, District-West Champaran.

... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Ram Adya Singh, Advocate

Mr. Arjun Prasad, Advocate

For the Opposite Party No.2 : Mr. Shashi Shekhar Diwedi, Sr. Advocate

Mr. Ranjan Kumar Dubey, Advocate

Ms. Sangita Sharma, Advocate

For the State : Mr. Jharkhandi Upadhaya, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-11-2015

Heard Mr. Ram Adya Singh, learned counsel for the
petitioners, Mr. Shashi Shekhar Diwedi, learned Senior Counsel for
the opposite party No. 2 and Mr. Jharkhandi Upadhaya, learned
APP for the State.



2. By way of the present application under Section 482 of the Code of Criminal Procedure (For short 'Cr. P.C.),' the petitioners seek quashing of the order dated 15th July, 2014 passed by the learned Sub-Divisional Magistrate, Narkatiyaganj, West Champaran in Case No. 1830/2013 whereby and whereunder the application filed by the petitioners under Sub-Section (5) of Section 145 Cr. P.C. has been rejected and the land in question has been attached under Sub-section (1) of Section 146 Cr. P.C. and the officer-in-charge of Shikarpur Police Station has been appointed a receiver.

3. Mr. Ram Adya Singh, learned counsel for the petitioners has submitted that the petitioners no. 2 and 3 had purchased the land in question through registered sale deed dated 17.05.1966 and 19.08.1982 respectively. The land in question was coming in peaceful possession of the petitioners since the date of purchase and there was no apprehension of breach of peace warranting initiation of a proceeding under Section 146(1) Cr. P.C. He has contended that the learned Sub-Divisional Magistrate did not apply his mind to the facts of the case properly. He has not given any finding that the case is one of emergency and in absence of such finding the order cannot be sustained.

4. *Per contra*, Mr. Shashi Shekhar Diwedi, learned

Senior Counsel for the opposite party No. 2 has contended that mere omission to record a finding that the case is one of emergency will not vitiate the order passed by the learned Sub-Divisional Magistrate.

5. I have heard respective counsel for the parties and perused the record.

6. The learned Magistrate started initiation of a proceeding under Section 145 Cr. P.C. on the basis of the petition filed on 7th December, 2013 by the opposite party No. 2. In the said proceeding, a report was called for from the Shikarpur Police Station and Assistant Sub-Inspector of Police submitted a report on 10th January, 2014 stating therein that he had knowledge through confidential sources that the land in question was in possession of the opposite party No. 2 and there was apprehension of breach of peace at the hands of the petitioners. The Assistant Sub-Inspector of Police had also recommended for initiation of a proceeding under Sub-section (1) of Section 146 Cr. P.C.

7. The case of the opposite party No. 2 is that the disputed plot no.1041 belonged to ex-landlords, namely, Kawal Missir and Ramnath Missir. Before revisional survey, they had given the said plot in *Batai* to the Bisheshwar Tatwa and his name was recorded in Khatian, subsequently, Bisheshwar Tatwa



surrendered the *Batai* land to them which was partitioned by them repeatedly by a decree in Title Suit No. 62/1928 and later on by a compromise decree between the descendants in Partition Suit No.153/1954 before the Sub-Judge, Motihari. They have been coming in peaceful possession all along and ultimately vide registered sale deed dated 04.10.2012, the descendants of Kawal Missir sold the disputed land in favour of the opposite party No. 2. When the opposite party no. 2 went to get his name mutated, he learnt that the petitioners had surreptitiously got the land mutated in their favour and they were paying rent for the same. Having learnt about it, the opposite party no. 2 made inquiries and it came to light that everything was fictitious about the existence of a Rent Fixation Case No. 23/1988-89. On further inquiries, it transpired that one Kedar Dubey, son of Ramawtar Dubey got a sale deed created from Shiv Khelawan Tatwa, S/o Bisheshwar Tatwa whose name has been recorded as sikmidar in the khatian.

8. The further case of the opposite party no. 2 is that the sale deed executed by Kedar Dubey was absolutely void and *non est* in the eyes of law and such sale deed did not give any right to the petitioner.

9. The condition precedent for attachment of a disputed property and appointment of receiver is the existence of a

situation of emergency necessitating attachment to prevent breach of peace and it is incumbent upon the Court passing the order to record its satisfaction that there exists an emergency, which requires attachment of property. A mere apprehension of breach of peace does not bring a case within the ambit of Sub-section (1) of Section 146 Cr. P.C. Since the attachment of the property has been effected of causing serious inconvenience and prejudice to the party in possession of the property, such emergency measure should be taken only in exceptional cases and not in a casual manner. Apparently, the learned Sub-Divisional Magistrate has not recorded any finding that the case is one of emergency.

10. In my considered opinion, in absence of such finding the impugned order cannot be sustained. Accordingly, the impugned order dated 15.07.2014 passed by the learned Sub-Divisional Magistrate, Narkatiyaganj, West Champaran is quashed. The Sub-Divisional Magistrate, Narkatiyaganj is directed to restore possession to the person from whom the possession was taken.

(Ashwani Kumar Singh, J.)

Sanjeet/-

U		T	
---	--	---	--