

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43751 of 2012

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1. Mahendra Mahto, son of late Permeshwar Mahto
2. Rajesh Mahto, son of Sri Mahendra Mahto
3. Ramprit Mahto, son of Sri Mahendra Mahto
4. Sanjay Mahto, son of Sri Mahendra Mahto
All resident of village-Bhuindhara Tola Parbatipur, P.O.-Garhpura, P.S.-
Bakhari, District-Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. Bhola Mahto, son of Sukhi Mahto, resident of village-Bhuindhara Tola
Parbatipur, P.O.-Garhpura, P.S.-Bakhari, District-Begusarai.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ambika Bhagat
Mr.Santosh Kumar

For the Opposite Party/s : Mr. J.Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

2 23-04-2015 The petitioners are aggrieved by the order dated 14.07.2008 passed by the learned S.D.M., Bakhari in Case No.56M/02, whereby he has declared the possession of O.P.No.2 over the lands under dispute in a proceeding under Section 145 Cr.P.C. The petitioners are also aggrieved by the order dated 05.07.2012 passed in Cr.Rev.No.183 of 2008 by the learned Adhoc Additional District & Sessions Judge-Vth, Begusarai, whereby the aforesaid revision application filed on behalf of the petitioners has been dismissed and the order passed by the learned S.D.M., Bakhari has been affirmed.

It is well settled that in a proceeding under Section 145 Cr.P.C. only the question of possession of a party over the disputed lands can be gone into, but issue of title cannot be gone into by the learned Magistrate while passing the order under Section 145 Cr.P.C. The issue of title can be decided only by a Civil Court of competent jurisdiction on the basis of the

materials/evidence produced by the parties.

In view of the nature of the claims raised on behalf of the petitioners with respect to the lands under dispute, it is apparent that for wholesome settlement of the entire dispute between the parties question of title and possession both are required to be decided and only thereafter the dispute between the parties can be finally resolved.

So far the present case is concerned, by concurrent findings of fact recorded by both the courts below, possession of opposite party no.2 over the lands in question has been declared.

In the factual matrixes of the case, without interfering with the impugned orders, the present application is disposed of with a liberty to the petitioners to approach the Civil Court of competent jurisdiction by filing appropriately constituted civil suit for grant of appropriate relief(s).

If such a civil suit is filed on behalf of the petitioners, after impleading all the necessary parties within a period of three months from today, then the same shall be decided in accordance with law on the basis of the materials/evidence produced by the parties, but without being influenced/prejudiced by the findings recorded in the impugned orders passed by the learned courts below.

The application stands finally disposed of with the observations and directions made above.

(Birendra Prasad Verma, J)

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