

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 50065 of 2012

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Ganesh Singh, Son of Late Tanik Singh, resident of village – Sherpar, P.S. –
Barbigha, District - Sheikhpura

.... Petitioner

Versus

1. The State of Bihar
 2. Dharam Raj Singh, Son of Ramashray Singh
 3. Kaushal Kishore Singh, S/o Late Baleshwar Singh
- All R/o village – Sherpar, P.S. – Barbigha, District -
Sheikhpura

.... Opposite Parties

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

7 13-05-2015

Heard learned counsel for the petitioner and the learned
counsel for the State.

This is a petition for quashing the order dated 06.09.2012
passed by the Ad hoc Additional District and Sessions Judge-IV,
Sheikhpura in Cr. Rev. No. 54 of 2012 by which he has affirmed the
order dated 26.11.2011 passed by the Executive Magistrate, Sheikhpura
in Case No. 17M of 2004.

The case of the petitioner is that he and his wife
purchased a land and on that basis they claimed to declare their
possession. However, it is well settled principle of law in a proceeding
under Section 145 Cr.P.C. that the question to be considered and
decided that who is in actual physical possession of the land. A person
cannot claim to be in possession on the basis of his title as the claiming
possession on the basis of title is constructive possession where as in a
proceeding under Section 144 Cr.P.C. is not required to decide the
constructive possession but requires to decide the actual physical

possession. From the order of the learned Magistrate as well as the Sessions Judge, it is apparent that they have decided the case on the basis of the evidence about the actual possession and hence, I do not find any merit to interfere with the order passed by the learned Magistrate or by the learned Sessions Judge in his revisional jurisdiction as no irregularity has been pointed out to interfere with the order.

However, if the petitioner is aggrieved he may have the option to file a suit to decide his title or claim his possession on the basis of title.

With this observation, this petition is disposed of.

(Gopal Prasad, J.)

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