

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.970 of 2010

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1. Shri Bal Manohar Jalan Son of Late Hira Lal Jalan, resident of Quila House, Patna City, P.S. Chowk, Patna and also at Hira Place, New Dak Bungalow Road, P.S. Kotwali, District- Patna-800001, the Managing Trustee of the Satnarayan Ji Mandir Trust and Satnarayan Ji Trust, trusts registered under Societies Registration Act, 1887.
 2. Giriraj Manohar Lal Jalan, son of Late Hira Lal Jalan, resident of Quila House, Patna City, P.S. Chowk, Patna, District-Patna, the trustee of the Satnarayan Ji Mandir Trust and Satnarayan Ji Trust, trusts registered under Societies Registration Act, 1887.
 3. Aditya Jalan, Son of Bal Manohar Jalan, resident of Quila House, Patna City, P.S. Chowk, Patna, District- Patna, the trustee of the Satnarayan Ji Mandir Trust and Satnarayan Ji Trust registered under Societies Registration Act, 1887.
 4. Nikhil Jalan, Son of Late Shyam Manohar Jalan, resident of Quila House, Patna City, P.S. Chowk, Patna District, Patna, the trustee of the Satnarayan Ji Mandir Trust and Satnarayan Ji Trust, trusts registered under Societies Registration Act, 1887.

.... Petitioners.

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Senior Superintendent of Police, Patna, District-Patna.
3. The City Superintendent of Police (East), Patna, District-Patna.
4. The Deputy Superintendent of Police, Patna City, District-Patna.
5. The Deputy Superintendent of Police, Kotwali Police Station, Patna, District- Patna.
6. The District Magistrate, Patna, District- Patna.
7. The Sub-divisional Officer, Patna, District- Patna.
8. The Sub-divisional Officer, Patna City, District- Patna.
9. The Station House Officer, Kotwali Police Station, Patna, District-Patna.
10. The Station House Officer, Chowk Police Station, Patna City, District-Patna.
11. Sumitra Jalan, wife of Late Murli Manohar Jalan, resident of Quila House, P.S. Chowk, Patna City, District- Patna.
12. Harish Jalan, son of Late Murli Manohar Jalan, resident of Quila House, P.S. Chowk, Patna City, District- Patna.
13. Ravi Jalan, Son of Late Murli Manohar Jalan, resident of Quila House, P.S. Chowk, Patna City, District- Patna.

.... Respondents

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Appearance :

For the Petitioners : Mr. Mrigank Mauli, Advocate.
Mr. Vinay Mistry, Advocate.
Mr. Sakat Sinha, Advocate.

For the Private
Respondents : Ms. Asha Verma, Advocate.

For the State : Mr. Anjani Kumar, AAG.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

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22-05-2015

Heard learned counsel for the petitioners and learned counsel for the respondents as well as learned counsel for the State.

This writ petition has been filed for issuance of writ in the nature of mandamus directing the respondent-State authorities not to initiate any action on the complaint of respondents nos. 11, 12 and 13 without production of any judicial order from the court of competent civil jurisdiction with regard to the properties belonging to the Satnarayan Ji Trust lying in Budh Marg bearing Holding No. 410/97/103, Ward No. 18, Plot No. 170, 171, 172 and 173, Circle No. 6 measuring 50 Kathas, in the alternative restrain the respondents 11, 12 and 13 by resorting to Section 107 or 151 of the Cr.P.C. so that they do not interfere in the said property. Further issuance of writ on the nature of mandamus directing the respondent State authorities not to initiate any action on the complaint of respondent nos. 11, 12 and 13 without production of any judicial



order from the court of competent civil jurisdiction with regard to properties belonging to the Satnarayan Ji Mandir Trust lying on Holding No. 3 and 4, Ward No. 26/32/66, Circle No. 178 admeasuring Kathas, in the alternative, restrain the respondents 11, 12 and 13 by resorting to Section 107 or 151 of the Cr.P.C. so that they do not interfere in the said property.

However, admittedly, the aforesaid writ has been filed with regard to the land which is in dispute for which Title Suit No. 45 of 1958 and Title Suit No. 472 of 1973 has been filed and also a probate case is also pending between the parties.

Learned counsel for the petitioners however contends that opposite parties are in habit of filing proceeding under Section 144 Cr.P.C. and earlier also a proceeding under Section 144 Cr.P.C. was filed in the year 1986, 2007 and 2010. However, it is submitted no proceeding under Section 107 or any other proceeding under Section 144 Cr.P.C. has been initiated after 2010. It is



further submitted that repeated proceeding under Section 144 and 107 of Cr.P.C. is barred and petitioners apprehends the Respondents Nos. 11, 12 and 13 may initiate proceeding under Sections 144 and 107 of Cr.P.C., so they may be restrained and authority concern also be restrained from issuing of proceeding under Sections 144 and 107 of Cr.P.C. and relied upon decision reported in 1972 Cr.Law Journal 1655, 1984 SCC page 1 (Acharya Jagdishwaranand & others versus Commissioner of Calcutta and another) as well as 1970 Cr. Law Journal page 1298 for proposition that successive promulgation of orders under Section 144 and 107 of Cr.P.C. is not permitted or contemplated under Section 144 Cr.P.C. On the basis of decision, it is submitted that public authorities like S.D.O., District Magistrate and Officer-in-Charge of the police station be restrained for entertaining any petition of the opposite party to disturb their possession.

However, having regard to the submission the prayer has been made to pass order merely on



his apprehension that a proceeding under Section 144 and 107 of Cr.P.C. may be initiated at the instance of Respondent Nos. 11, 12 and 13 against the petitioners so respondent nos. 11, 12 and 13 be restrained from filing any such petition and authority empowered to issue process under Sections 144 and 107 of Cr.P.C. be restrained from issuing any such order.

However, the prayer has been made only in anticipation that respondent nos. 11, 12 and 13 may file petition under Sections 144 and 107 of Cr.P.C. without any instance that they ever filed such petition or any such order passed since 2010 and no order can be passed restraining the authority in anticipation that they may file proceeding under Section 144 and 107 of Cr.P.C. If the petitioners wish to restrain the respondent nos., 11, 12 and 13 from interference they file petition injunction against them making out a case for injunction, but no such order can be passed by this Court in anticipation. In decision relied the order has been passed in a

proceeding under Section 144 Cr.P.C. and not in anticipation and hence has no relevance.

However, it is admitted that suit is pending between both the parties and if the petitioners wants to restrain the opposite party from entering their possession then they file a petition for injunction to restrain the opposite party in the suit itself and when remedy is available to the petitioners then it is not proper to exercise inherent jurisdiction with regard to the property when the suit is pending between the parties. Moreover, it is not proper to pass anticipatory order to restrain the respondent nos. 11, 12 and 13 to file any petition before any authority when earlier proceeding under Section 144 Cr.P.C. was filed in the year 2007 and 2010 which is in remote past. It is true successive petition has been filed under Section 144 Cr.P.C. to restrain but successive petition does not indicate quick succession and not does not disclose of this suit. Moreover order passed without proceeding under Section 144 Cr.P.C. initiated and i.e. relying to take

those observation without repeated petition under Section 144 Cr.P.C. passed in quick succession of possession.

However, there is no such order to restrain the opposite party is only anticipatory without any case and apprehension is without any basis, it is not proper to pass anticipatory order to restrain the opposite party.

Hence I do not find any merit in this writ petition. Accordingly, this writ petition is dismissed.

m.p.

(Gopal Prasad, J)

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