

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16167 of 2015

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1. Rajdeo Yadav @ Raj Deo Prasad son of Late Deonath Yadav
2. Barhu Yadav son of Late Gopi Yadav, all Resident of village- Jaman
Bigha P.S. Parasbigha, Dist. Jahanabad

.... Petitioner/s

Versus

1. The State of Bihar
2. Yugal Kishore Sharma @ Jugal Kishore Prasad, Son of Late Someshwar
Prasad @ Sonu Babu, Resident of village- Pandui, P.S.- Parasbigha,
District- Jahanabad at present Resident of Matnodih, P.S. and District
Domchanch (Kodarma), Jharkhand
3. Tallu Rai son of Sri Brahmdeo Rai, Resident of village- Sakri Tola at P.S.
and District- Jahanabad

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bhola Kumar

For the Opposite Party/s : Mr. Indu Kumari Srivastava(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

3 29-07-2015 Heard learned counsel for the petitioners, learned
counsel for O.P. No. 2. as well as learned A.P.P..

Petitioners who happen to be second party before the
learned lower court in connection with case No. 649/12 (Tallu Rai
Vs. Rajdev Yadav & Ors.) have challenged the notice dated
26.02.2015 communicated vide letter No. 28 issued by the
Executive Magistrate, Jehanabad divulging attachment of land
under dispute in terms of section 146(1) of the Code of Criminal
Procedure in connection with the above referred proceeding, under
section 145 of the Code of Criminal Procedure.



From perusal of the notice itself it is evident that the learned Executive Magistrate incorporated the fact that in spite of having written statement, documents filed on behalf of respective parties, it is not clear in whose possession the land under dispute happens to be. It has also been incorporated that there happens to be imminent danger of apprehension of breach of peace attracting application of Sub-section (1) of section 146 of the Code of Criminal Procedure.

It is apparent from the notice that an enquiry in terms of Sub-section (4) of Section 145 of the Code of Criminal Procedure is yet to commence and conclude.

Application under Sub-section (1) of Section 146 of the Code of Criminal Procedure is permissible in the circumstances:

- (a) Where there happens to be case of emergency;
- (b) Where the learned lower court after conducting an enquiry under Sub-section (4) of Section 145 of the Code of Criminal Procedure unable to decide in whose possession land happens to be;
- (c) Whenever the learned Magistrate after conducting an enquiry comes to a conclusion that none of the contesting party happens to be under possession of the land, would attach the land under Sub-section (1) of Section 146 of the

Code of Criminal Procedure.

With regard to the finding under (b) as well as (c), after attachment the respective parties would be directed to have their right properly ascertained by a competent court and till then, to maintain the status-quo apart from attachment, there should be appointment of receiver.

From the notice served upon the petitioners, it is apparent that learned lower court was very much confused and that happens to be reason behind presence of all the ingredients in conjoint manner though, it happens to be independent one without having any sort of opportunity to be over-lapped.

That being so, the notice which contains the order and further acknowledging the petitioners regarding attachment as well as appointment of receiver in terms of form No. 26 as appended under Code of Criminal Procedure is not at all found in accordance with law.

Consequent thereupon, the same is quashed. Petition is allowed.

(Aditya Kumar Trivedi, J)

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