

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6549 of 2013

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1. Rajeshwar Yadav S/O Ram Prakash Yadav R/O Vill-Kabariya, P.S.-
Sadar, Distt-Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar
2. Smt. Sheela Chaudhary W/O Surya Narayan Chaudhary R/O Mohalla-
Kabirchak, P.S.-Sadar, Distt-Darbhanga
3. Rakesh Mohan S/O Late Birendra Mohan R/O Mohalla-Kabirchak, P.S.-
Sadar, Distt-Darbhanga
4. Smt. Subhadra Kumari W/O Sri Baua Lal Mandal R/O Mohalla-A 1/A
C4 Nagar Benthia, P.S.-Laheriasarai, Distt-Darbhanga

.... Opposite Party/s

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Appearance :

For the Petitioner : M/S. Deo Narayan Yadav & Saroj
Kumar, Advocates.
For the State : Mr. Ajay Kumar 1 (App)
For O.P. No. 4 : Mr. Bijay Bhushan Prasad, Advocate.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

4 05-05-2015 Heard.

It appears that a petition was filed for initiating an action under Section 147 Cr.P.C in order to draw his satisfaction and probably in abundant caution, the Sub Divisional Magistrate, Sadar, Darbhanga, issued a notice to the Opposite Parties calling upon him to appear before him. The parties appeared. What appears further from order dated 31.01.2012 is that after issuing the notices, the Sub Divisional Magistrate had himself inspected the place of dispute and as appears recorded by him in the impugned order, had found no existence of any easementary



rights, pathway or obstruction thereto. He heard the parties and after hearing them drew an order indicating that he was at all not satisfied about the existence of any easementary rights or obstructions of any such right three months before the filing of the petition and, as such, not being satisfied refused to initiate an action under Section 147 Cr.P.C.

The learned counsel appearing on behalf of the petitioners submitted that it was incumbent upon the learned Sub Divisional Magistrate to record evidence before he had passed the order refusing to initiate the proceedings.

As the provisions stand the requirement of recording evidence is only when there is a denial of the public right or thus, the denial of the existence of the easementary rights or obstructions to such right and that could happen when the initial order under Section 147 Cr.P.C has been passed calling upon parties to show cause by filing their written statements. That stage having not reached in the court below and the court below had not been satisfied about any existence of any of the ingredients which are required to be fulfilled for initiating a proceeding under Section 147 Cr.P.C. it was not required to record evidence.

After having gone through the impugned order, I find that the petition is meritless and the same is dismissed.

However, if the petitioner is so advised, he may knock at the doors of the appropriate Civil Court for the relief which may, be in his opinion, accrue to him.

(Dharnidhar Jha, J)

B.Kr./-

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