

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46427 of 2012

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1. Deo Sharan Singh @ Munna Singh son of late Bindhyavasni Singh
2. Gaurav Singh son of Deo Sharan Singh.
Both are residents of village & Post –Akhilaspur, PS-Bhabua, District-Kaimur.
.... Petitioner/s

Versus

1. The State of Bihar.
2. The Sub-Divisional Magistrate, Bhabua, District-Kaimur (Bihar).
3. Mossmat Girija Kuer purported to be wife of late Bindhyavanshi Singh, resident of village & Post Akhilaspur PS-Bhabua, District-Kaimur (Bihar) at present resident at care of Mahipal Singh, Ward no. 8 Near Devi Mandir, PS-Bhabua, District- Kaimur(Bihar).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : M/s Md. Waliur Rahman and K.K. Tiwari, Advs.
For the Opposite Party/s : Mr. Rajesh Kumar, Adv.
Mr. Vinod Kumar, Adv.
For the State Mr. C.B. Prasad

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-04-2015

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

In this case, the petitioner is challenging the order dated 3/6/2010 passed in Cr. Rev. Nos. 33 of 2010 /02 of 2010 and 36 of 2010 /03 of 2010 and also for quashing the order dated 8.4.2010 and 13/4/2010 respectively passed in Case No. 12/03 of 2010 by which the Sub-Divisional Magistrate, Bhabua has converted the 144 proceeding in a proceeding under section 145 of the Code of Criminal Procedure, so much so that he has also passed the order under section 146 (1) of the Code of Criminal Procedure thereby appointed the Receiver.

Grievance has been raised by the petitioner that opposite party no. 3, claiming to be wife of Bindhyavasni Singh, filed Title Suit No. 261 of 2007, claiming herself ½ share in the property in question and also made a prayer that while passing the order of partition, Survey Knowing Pleader Commissioner be appointed for the purposes of delivery of possession.

The Civil Court, in the aforesaid case, has also passed the order of injunction on 30/7/08 whereby and whereunder he has injuncted all the parties to make any alienation, put encumbrance or any way sell out the property, so much so, the application for appointment of Receiver under order XL Rule-1 has been filed on 14/7/10 which is pending for consideration. In the meantime, opposite party no. 3 approached Sub-Divisional Magistrate, Bhabua and filed an application on 6/3/10 for initiation of 144 Cr.P.C. proceeding which was initiated and later on, it was converted to 145 Cr. P.C. proceeding and under section 146(1) of the Act, Receiver has been appointed.

The counsel for the petitioner submits that initiation of criminal proceeding in the nature of 144 converting in 145 Cr.P.C. and later on, appointment of Receiver under section 146 (1) of the Code is completely an abuse of process of the Court, as when the Civil Court is in seisin of the matters, the criminal court, for the same property and for identical dispute,

could not have initiated a parallel proceeding with regard to the appointment of Receiver and deciding the possession of the disputant party.

The plaint itself shows that the property in question is a joint family property under the Hindu Law. Every co-parcenor has a proportionate share on every inch of the property so long it is not partitioned by metes and bounds and in that circumstance, the converting proceeding 145 of Cr.P.C. is per se illegal, as the possession of one co-parcenor is possession of all co-parcenors under the Hindu Law. Here admittedly plaintiff does not claim the property to be her self acquired property, she herself claims it to be joint family property, so much so that already a civil suit is pending.

The other side has submitted that petitioners are not partitioning the joint family property causing a great convenience even for day to day life. Petitioners are so callous that they are not giving due share in the usufruct of the land. Life has become tough though plenty of property, so much so she has a half share in the joint family property which has been disputed by other side, she is not wife of Bindhyavasni Singh is an impostor. However, it is clear that she herself is claiming share in the joint family property for which partition suit is pending. It is not proper course for the criminal court to initiate a proceeding under section 145 and convert in 146 (1) Cr. P.C.



proceeding and appoint the Receiver. When the petition is already pending before the Civil Court in such view of the matter, the proceeding under section 144 Cr.PC and its conversion under Section 145 Cr.PC is not sustainable consequent proceeding and appointing Receiver under Section 146 Cr.PC is completely an abuse of process of Court and if it is allowed to continue, will lead to travesty of justice. Accordingly, whole proceeding is quashed. However, the petition of Receivership dated 14/7/08 is pending before Civil Court, the Civil Court is directed to dispose of the same within four weeks from the date of receipt/production of a copy of this order.

The counsel for the petitioner submits that the petitioner will not create any obstruction in disposal of petition, related to appointment of Receiver.

This Court is not giving any opinion on the merit of the appointment of Receiver.

Accordingly, this petition is allowed.

(Shivaji Pandey, J)

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