

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13747 of 2013

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1. Md. Mustaque Alam, S/O Late Islamuddin.
2. Md. Ashfaque Alam S/O Late Islamuddin
Both are residents of village Harpur, P.S. Bousi, District Araria.

.... Petitioners

Versus

1. The State of Bihar.
2. The S.D.M., Araria.
3. Most. Anis Fatma, W/O Late Istiaque Alam, Resident of Harpur, P.O. Mirjapur, P.S. Bousi, District Araria.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Jagdish Prasad Bhagat, Advocate
For the State : Md. Mushtaque Alam, A.P.P.
For the O.P.No.3 : Mr. Kundan Kumar Singh, Advocate
: Mr. Bishwajeet Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AMARESH KUMAR LAL
ORAL ORDER

4 30-07-2015 Heard the learned counsel for both the parties.

2. This application has been filed for setting aside the entire proceedings of 145 Cr.P.C. initiated by the Sub-Divisional Magistrate, Araria vide order dated 25.06.2012 passed in Case No.110M of 2012 and its consequential order dated 26.11.2012 passed under Section 146 (1) Cr.P.C. in the same proceeding whereby some of the land has been separated from the proceeding and attachment order has been passed although some of the land of the proceeding has been the subject matter of T.S.No.43 of 2012 filed by the opposite party no.3.

3. The learned counsel for the petitioners submits that



the land and property mentioned in 145 Cr.P.C. proceeding, 146 (1) Cr.P.C. proceeding and T.S. No.43/2012 are the joint family property acquired by Islamuddin, father of the petitioners. There has been no partition either amicable or by way of family arrangement or by any partition suit by the court of law. The petitioners and opposite party no.3 have been in joint possession of the entire land left behind by their ancestor Islamuddin. He further submits that the three daughters of late Islamuddin have not been made parties in the proceeding initiated under Section 145 Cr.P.C. when they are entitled to their respective shares to be carved out from the land left behind by their father Islamuddin, though for the present, the land of their share is under the physical cultivating possession of the petitioners and yield wherefrom the land of their respective shares are provided to the sisters of the petitioners. He further submits that Mostt. Anis Fatma, widow of late Istiaque Alam (opposite party no.3) had filed Misc. Petition No.130/2012 on 21.01.2012 before the learned Sub-Divisional Magistrate, Araria to initiate proceeding under Section 144 Cr.P.C. in respect of land described in the petition against the petitioners. In the aforesaid petition, the opposite party no.3 has stated that the land in question along with other land belonged to the ancestor of the opposite party no.3 and the petitioners.



Islamuddin died leaving behind three sons, Md. Istiaque, Md. Mustaque and Md. Asfaque, who inherited the same and came in possession. In private partition among them the land in question had fallen in exclusive share of Md. Istaque Alam (husband of opposite party no.3) and the petitioners were provided other land. After the death of her husband, the opposite party no.3 has been coming in possession whereof.

4. The main contention of the learned counsel for the petitioners is that the initiation of the proceeding under Section 145 Cr.P.C. is not in accordance with law. It does not appear from the impugned order that the Magistrate is satisfied from the police report or upon other information that a dispute is likely to cause a breach of peace. Since there is no satisfaction mentioned in the impugned order, the impugned order has not been passed in the spirit of Section 145 Cr.P.C.

5. He has further submitted that some of the land is also the subject matter of Title Suit No.43/2012 between both the parties in the court of learned Sub-Judge-1, Araria.

6. In this view of the matter, the aforesaid proceeding is an abuse of process of the court and the impugned order is fit to be set aside.

7. The learned counsel for the opposite party no.3 has



submitted that admittedly the husband of opposite party no.3 and the petitioners are own brothers. They are co-sharers of the property inherited by their father Islamuddin. Istiaque Alam died. Thereafter, the heirs of Istiaque Alam have been disturbed in possession of the land in dispute, as such, opposite party no.3 filed a petition in the court of learned Sub-Divisional Magistrate, who was pleased to call for a report from the police. The report was submitted (Annexure-2). After considering the material, a proceeding under Section 144 Cr.P.C. was initiated and petitioners were restrained from going over the land, in question and notice dated 29.02.2012 was issued to the petitioners fixing 13.03.2012 to submit show cause. The petitioners submitted their show cause. Thereafter, it was considered by the learned Magistrate that no effective orders can be passed under Section 144 Cr.P.C., as such, after hearing both the parties and on perusal of the show-cause and the police report, proceeding under Section 144 Cr.P.C. was converted into a proceeding under Section 145 Cr.P.C. and both the parties were asked to file their written statement fixing 2.08.2012 for their appearance. He has also submitted that from perusal of the Title Suit No.43/2012, it is apparent that the opposite party no.3 and her minor children have filed the aforesaid suit against the petitioners for declaration that the deed of Will



No.200 dated 2.09.2011 purported to be executed and registered by the husband of the opposite party no.3 in favour of defendants (petitioners) with respect to disputed land is illegal, fraudulent, inoperative and not binding on the plaintiffs and the defendants did not derive any title to the suit land bearing Khata Nos.113, 112 and 327, whereas, initiation of the proceeding under Section 145 Cr.P.C. is also with regard to other land of different plots and khata numbers of the land in dispute. He has also submitted that it appears from the impugned order dated 25.06.2012 that the learned Magistrate had considered the show-cause filed on behalf of both the parties, the records and also the police report and thereafter, the Magistrate was satisfied himself that there was land dispute between both the parties and therefore, the proceeding under Section 145 Cr.P.C. was initiated against both the parties and both the parties were directed to file their written statement. The initiation of the proceeding under Section 145 Cr.P.C. is in accordance with law and it does not require any interference by this Court. It has also been submitted that considering the land dispute and emergent situation, some land mentioned in the order dated 26.11.2012 has been attached by the learned Sub Divisional Magistrate under Section 146 (1) Cr.P.C. and Circle Officer/Station House Officer has been appointed as receiver.

8. After hearing the learned counsel for both the parties and on perusal of the material on the record, it appears that contention of the learned counsel for opposite party no.3 is correct. It appears that the learned Magistrate has satisfied himself from the report of police as well as the other information given by the parties concerned that a dispute is likely to breach of peace concerning the land mentioned in the police report. The title suit is with regard to some land which is claimed to have been acquired by the petitioner on the basis of deed of Will purported to be executed by the husband of opposite party no.3. As such, both the issues in the proceeding under Section 145 Cr.P.C. and in the title suit are different.

9. Considering the facts and circumstanced stated above, I do not find any ground to interfere with the impugned order. This petition has got no merit and accordingly, it is dismissed.

(Amaresh Kumar Lal, J)

V.K. Pandey/-

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