

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22951 of 2014

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1. Anuj Kumar, Son of Sumera Singh, Resident of village- Saidpur Ganesh, P.O.- Panapur (Dharampur), P.S.- Bidupur, District- Vaishali.
 2. Nitesh Kumar @ Nitesh Kumar Singh, Son of Late Awadhesh Prasad Singh, Resident of village- Araji Kanchanpur, P.S.- Bidupur, District- Vaishali.

.... Petitionerss

Versus

1. The State of Bihar,
2. Mukesh Kumar, Son of Raj Kishore Choudhary, Resident of village- Sahdullahpur, P.S.- Ganga Bridge, District- Vaishali.

.... Opposite Party

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Appearance :

For the Petitioners/s : Mr. Surendra Kishore Thakur
For the Opposite Party/s : Mr. Dashrath Mehta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL ORDER

4 23-06-2016

Heard.

This application has been filed under Section 482 of the Cr.P.C. against the order dated 18.05.2013 passed in Case No. M-397 of 2013, whereunder the Sub-Divisional Magistrate, Vaishali at Hajipur converted the proceeding of Section 144 Cr.P.C. into 145 Cr.P.C. in which the petitioners were the members of the second party and O.P. No. 2 was the member of the first party with direction to file their written statements on 22.04.2013 and subsequent order dated 06.07.2013, whereunder the land in dispute has been attached under Section 146(i) Cr.P.C. by the Sub-Divisional Magistrate, Vaishali at Hajipur.

The sole submission of the learned counsel for the

petitioners is that Raj Kishore Choudhary, father of member of the first party/O.P. No. 2 has already filed Title Suit No. 545 of 2012 for declaration of the title in respect to suit property and same is pending in the Court of Sub-Judge-III, Vaishali at Hajipur. As such continuance of proceeding under Section 145 Cr.P.C. is bad in law.

On going through the impugned order, it appears that the proceeding of Section 144 Cr.P.C. is converted under Section 145 Cr.P.C. in which the petitioners were the members of the second party and O.P. No. 2 was the member of the first party with direction to file their written statement in respect to possession of the land in dispute and taking into consideration the report of Circle Officer regarding existence of apprehension of breach of peace on spot, the order dated 06.07.2013 has been passed regarding attachment of the land in dispute. There is no doubt that in case of pendency of title suit declaration the title / possession in competent Civil Court the proceeding under Section 145 Cr.P.C. in between the same parties is bad, but through the impugned order dated 18.05.2013, the petitioners were required to file their written statements in respect to their claim. As such the petitioners have opportunity to raise his point in written statement or to file an application under Section 145(5) Cr.P.C. to drop the proceeding.

As such, I find no illegality in the impugned order to interfere with the same in an extraordinary jurisdiction under Section

482 Cr.P.C. and, accordingly, the present application is dismissed. However, petitioners are at liberty to file application, if required, under Section 145(5) Cr.P.C. to raise their points about the non-maintainability of the proceeding under Section 145 Cr.P.C. due to pendency of the title suit in which the prayer for the declaration of title has been made.

(Rajendra Kumar Mishra, J)

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