

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.722 of 2014

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Manoj Kumar Thakur, Son of Sri Kamleshwari Thakur, Resident of
Mohalla- Station Road Tilak Nagar, Begusarai, P.S.- Begusarai, in
the district of Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.
 2. Abhiyuday Sinha, Son of Kumar Sachidanand Sinha.
 3. Niraj Kumar, Son of Sri Saroj Kumar.
- Both residents of Tilak Nagar, Ward No.-30, Begusarai Town
Police Station in the district of Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Pd. Singh, Sr. Adv.
Ms. Anita Kumari Singh, Adv.
Mr. Amrit Anunay, Adv.

For the State : Mr. B.M.P. Sinha, APP

For O.P. Nos. 2 & 3 : Mr. Deepak Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 23-12-2016

The petitioner has challenged an order, dated
30.06.2014, passed by learned Additional Sessions Judge-V,
Begusarai, in Cr. Revision No. 68 of 2014, whereby, he has set-
aside an order, dated 10.01.2014, passed by the learned Sub-



Divisional Magistrate, Begusarai. Learned Sub-Divisional Magistrate, Begusarai, by the said order, dated 10.01.2014, had allowed impleadment of the petitioner to intervene in a proceeding under Section 147 of the Code of Criminal Procedure (*hereinafter referred to as the "Code"*).

2. The short question which the present criminal revision application involves is as to whether the petitioner could claim his impleadment as of right in a proceeding, under Section 147 of the Code, initiated at the instance of opposite party No.2 herein and the dispute being between opposite party No. 2 and opposite party No. 3 only.

3. The facts, which are not in dispute, are that a dispute cropped up between opposite party No. 2 and the father of opposite party No. 3 (Subodh Kumar), leading to initiation of a proceeding, under Section 144 of the Code, between opposite party No. 2 and the father of opposite party No. 3 with registration of Case No. 430 of 2012 (Abhiyuday Kumar Vs. Subodh Kumar) in the Court of learned Sub-Divisional Officer, Begusarai. The said proceeding concluded with an order, passed on 12.09.2012, whereby the proceeding was dropped against Subodh Kumar and the Rule was made absolute against opposite party No. 2, namely, Abhiyuday Sinha. It transpires from the record that the father of opposite party No. 3 had made a request for police protection, there being some dispute over his



right of easement over some piece of land. A proceeding, under Section 147 of the Code, thereafter commenced on the recommendation of the Circle Officer, Begusarai, between the said Abhiyuday Kumar/Abhiyuday Sinha and Subodh Kumar/Subodh Verma, which concluded with an order, dated 09.02.2013, passed by learned Sub-Divisional Magistrate, Begusarai. Against the said order, dated 09.02.2013, opposite party No. 2, Abhiyuday Sinha, filed a criminal revision application in the Court of learned Sessions Judge, Begusarai, which came to be registered as Cr. Revision No. 152 of 2013 and was sent to the file of learned Additional Sessions Judge-IV, Begusarai, who finally disposed it of by an order dated 31.08.2013. Learned Additional Sessions Judge by the said order, dated 31.08.2013, set-aside the order, dated 09.02.2013, passed by the learned Sub-Divisional Magistrate, mainly on the ground that though in a proceeding, under Section 147 of the Code, learned Sub-Divisional Magistrate entered into an enquiry in which documentary as well as oral evidence of both the parties were adduced, there was no consideration of such evidence in the impugned order. While setting-aside the order of the learned Sub-Divisional Magistrate, on the aforesaid ground, learned Additional Sessions Judge remitted the matter back to him to pass an order afresh after giving the parties an opportunity to adduce their evidence, oral as well as



documentary, and considering and discussing such evidence. After passing of the order, dated 31.08.2013, by learned Additional Sessions Judge-IV, Begusarai, as noted above, the learned Sub-Divisional Officer, Begusarai, by an order, dated 10.01.2014, allowed an application filed on behalf of the petitioner to intervene in the said proceeding. The said order, dated 10.01.2014, has been set-aside by the impugned order, dated 30.06.2014, passed by the learned Additional Sessions Judge-V, Begusarai, which is under challenge in the present proceeding.

4. Mr. Akhileshwar Pd. Singh, learned senior counsel, appearing on behalf of the petitioner, has submitted that the petitioner was validly impleaded as party in the proceeding, under Section 147 of the Code, since he is owner of a land, which is adjacent to the disputed piece of land over which right of easement is being sought. On a query, being made by the Court, as to whether the petitioner has been exercising any right of easement over the said land, the reply has been in the negative. There is no such plea taken in the present application that the petitioner is in any way connected with the said land except that he resides in a house which is adjacent to the disputed land. He has secondly submitted that the order of learned Sub-Divisional Magistrate, allowing impleadment of the petitioner, as an intervenor in a proceeding,



under Section 147 of the Code, cannot be said to be in breach of earlier order, dated 31.08.2013, passed by learned Additional Sessions Judge-IV, Begusarai, in Cr. Revision No. 152 of 2013, since the said order did not prohibit the learned Sub-Divisional Magistrate, Begusarai, from passing an order of impleadment.

5. This is not in dispute, thus, that the petitioner did not either claim title or possession over the disputed land nor did he claim any right of easement. I fail to understand in what circumstance and capacity the petitioner could claim himself to be impleaded as a party in a proceeding, under Section 147 of the Code, which essentially involves question of right of user of any land or water. Sub-Section (3) of Section 147 of the Code, enables the Magistrate to make an order prohibiting any interference with the exercise of such right, subject to the *proviso* to sub-Section (3), which prohibits the Magistrate from making any order, unless it is shown that such right has been exercised within three months, next before the receipt under sub-Section (1) of the report of a police officer or other information leading to institution of the inquiry under the said section.

6. The plea that since there was no prohibition for the learned Sub-Divisional Magistrate from passing an order to implead the petitioner as party-respondent, the order, permitting impleadment ought not to have been interfered by the learned



Additional Sessions Judge, is nothing, but preposterous and contrary to basic legal reasoning. This contention is rejected outright.

7. I do not find any reason why the petitioner wanted to implead himself in the said proceeding as a party when the persons, claiming right of user and one resisting such right, were already there as parties.

8. This criminal revision application has absolutely no merit and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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