

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.745 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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Mamun Mian, Son of late Habib Mian, resident of Village- Pahari Majhaua, P.S. Chautarwa, District West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary (Home), Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The District Magistrate, West Champaran at Bettiah
5. The Superintendent of Police, Bagaha, P.S. Bagaha, District -West Champaran at Bettiah.
6. The Sub Divisional Magistrate, Bagaha, P.S. Bagaha, District -West Champaran at Bettiah. .
7. The Executive Magistrate, Bagaha, P.S. Bagaha, District -West Champaran at Bettiah.
8. The Officer-in-charge, Chautarwa Police Station- Bagaha, West Champaran at Bettiah.
9. Hamid Mian, Son of Late Mir Mian, resident of Village- Pahari, Majhaua, P.S. Chautarwa, District West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ganpati Trivedi, Sr.Adv. Mr. Manoj Kumar, Adv. Mr. Madan Mohan, Adv. Mr. Shambhu Prasad Gupta, Adv. Mr.Sanjay Kumar Pandey, Adv.
For the Respondent nos.1to8:	:	Mr. S.K.Saraf, AC to GP-7
For the Respondent no.9	:	Mr.Baxi S.R.P. Sinha, Sr.Adv. Mr.Zainul Abedin, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 10-04-2017

Heard learned counsel for the parties.

2. The petitioner has invoked the writ jurisdiction of this Court for quashing the order dated 21.11.2014 passed by the learned Sub-Divisional Magistrate, Bagaha, West Champaran in Case No.103 of 2007 whereby the learned Magistrate has dropped the proceeding under Section 145 Cr.P.C. on the ground of pendency of



the civil suits before the competent Civil Court and simultaneously ordered for initiation of a proceeding under Section 107 Cr.P.C.

3. Further prayer is for providing police protection to the petitioner for the purposes of harvesting the crops shown and grown on the referred land said to be disputed land.

4. Submission of the petitioner is that the court below has not assigned any reason supported by material on the record that there is apprehension of breach of peace at the hands of the parties or likelihood of disturbance of public tranquility. Hence, proceeding under Section 107 Cr.P.C. is bad in law.

5. Learned counsel for the respondents specially the private respondent no.9 does not dispute that the court below has not assigned any reason or disclosed any material to substantiate that there is apprehension of breach of peace or chances of disturbance of public tranquility at the hands of petitioner or the respondent no.9. Hence, there was no material for initiation of a proceeding under Section 107 Cr.P.C.

6. Perusal of the impugned order reveals that the direction to initiate a proceeding under Section 107 Cr.P.C. is not substantiated by the material on record and supported by any cogent reason. Hence, the same is not sustainable in law. Accordingly, the same is set aside.



7. So far prayer for providing police protection is concerned, learned counsel for the petitioner submits that in the past such protection was provided to the petitioner by the order dated 13.12.2001 passed in CWJC No.14123 of 2001 (Habib Mian Vs. The State of Bihar and Others) wherein this Court had directed the Collector of the district to examine the grievance of the petitioner and take appropriate steps and after examining the grievance of the petitioner the Collector had directed the Superintendent of Police, Bagaha to provide police protection vide letter dated 12.02.2002 at Annexure-3 and again vide Annexure-5. However, he submits that the prayer is infructuous because the time for harvesting of the crops has already elapsed.

8. On the other hand, learned counsel for the respondent no.9 submits that the respondent no.9 had filed a suit for partition vide Partition Suit No.19 of 1994 against Habib Mian, the father of the petitioner and the suit was dismissed for the reason that the suit property is exclusive property of Habib Mian, the father of the petitioner. The respondent no.9 challenged the dismissal in Title Appeal No.61 of 1998 and by judgment dated 20th January, 2000 the learned 3rd Additional District Judge, Bettiah dismissed the appeal. However, observed in last paragraph of the judgment vide paragraph 30 of the judgment as follows:-

“In the light of discussion it is apparent that the



finding of learned lower court that the suit property was personal property of Asgar Mian cannot be confirmed. Hence, it is set aside. It is hold that the suit property was joint property but its partition had already taken place and it is no more a joint properties of the parties. Hence, this suit of partition is not maintainable nor the plaintiffs are entitled to get any decree for any other relief prayed in this suit. Hence, the suit is fit to be dismissed on this score. Hence, the judgment and decree passed by learned lower court dismissing the suit is fit to be confirmed and it need not requires any interference by this Court.”

9. Submission is that the aforesaid judgment attained finality as it was not challenged anywhere. Therefore, uptil now it is not established as to which property was allotted to the share of which of the parties in the previous partition as held by the learned appellate court. Further contention is that later on the respondent no.9 and others filed Title Suit No.28 of 2007 against the petitioner and others for relief of permanent/temporary injunction in respect of the suit land and the matter is still sub-judice before the learned Sub-Judge-II, Bagaha, West Champaran. In the aforesaid circumstances, the petitioner is not entitled to police protection unless it is established that the referred property is exclusive property of the petitioner. It is contended that the aforesaid finding of the learned appellate court that the land is not exclusive property of the petitioner was not brought to the notice of this Court at the time of order passed in CWJC No.14123 of 2001 vide Annexure-2 and CWJC No.6198 of 2002 vide



Annexure-4.

10. I find substance in the submission of learned counsel for the respondent no.9 that the learned appellate court had set aside the finding of the learned trial court that the property is exclusive property of the ancestors of the petitioner. However, dismissed the appeal on the ground that since property was already partitioned there was no reason to repartition the same and accordingly affirmed the judgment and decree of the learned trial court. However, there is no material on the record to substantiate that the referred property for protection of harvesting whereof prayer is for police protection is exclusive property of the petitioner. Since civil litigation is still pending and there is no such finding of the competent court, in my view, the police protection cannot be allowed to the petitioner. Hence, the writ application is devoid of any merit and is, accordingly, dismissed.

11. Any observation of this Court shall not prejudice the case of the parties in any pending suit between them.

Arvind/-

(Birendra Kumar, J)

AFR/NAFR	
CAV DATE	
Uploading Date	12.04.2017
Transmission Date	

