

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29378 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- NAWADA

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1. Siyaram Singh Son of Late Ram Lakhan Singh Resident of Village - Ram Nagar
Nawada, P.O. + P.S. & District - Nawada

.... Petitioner/s

Versus

1. The State Of Bihar through the District Magistrate, Nawada
2. Shivnath Prasad Son of Late Chhotu Gope Resident of Mohalla - Ram Nagar
(Forcibly Came In Possession on The Basis of Wrong Delivery of Possession Over
the Part Land) P.S. & P.O. & District - Nawada
3. Raj Kumari Devi Wife of Shivnath Prasad Resident of Mohalla - Ram Nagar
(Forcibly Came In Possession on The Basis Of Wrong Delivery of Possession Over
the Part Land) P.S. & P.O. & District - Nawada
4. Ravi Shankar Prasad Son of Shivnath Prasad Resident of Mohalla - Ram Nagar
(Forcibly Came In Possession on The Basis Of Wrong Delivery of Possession Over
the Part Land) P.S. & P.O. & District - Nawada
5. Yogendra Prasad Son of Karu Mahto Resident of Mohalla - Ram Nagar (Forcibly
Came In Possession on The Basis Of Wrong Delivery of Possession Over the Part
Land) P.S. & P.O. & District - Nawada
6. Malti Devi Wife of Yogndra Prasad Resident of Mohalla - Ram Nagar (Forcibly
Came In Possession on The Basis of Wrong Delivery of Possession Over the Part
Land) P.S. & P.O. & District - Nawada

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Ms Vagisha Pragya Vacaknavi, Adv.
For the State : Mr. Abhay Kumar Roy, APP
For Opposite Party No.2 : Mr. Suirendra Kishore Thakur, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-04-2017

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the opposite party nos. 2
to 6.

2. by way of the present application preferred under
Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'),
the petitioner seeks quashing of the order dated 10.06.2013 passed by
the learned Sessions Judge, Nawada in Cr.Revision No. 21 of 2013



whereby the learned Sessions Judge allowed the revision application filed by the opposite party nos.2 to 5 challenging the order dated 02.04.2013 passed by the Sub-Divisional Officer, Nawada in Misc. Case No. 1102 of 2012.

3. From the pleadings of the parties, it would be apparent that the petitioner had made an application before the Sub-Divisional Magistrate, Nawada praying therein to connect the broken pipeline for water in Holding No.4/12 in Ward No.7(old)/2(new). It is the case of the petitioner that about 8 decimals of land from the eastern side was forcibly taken in possession out of 12 decimals of land in the name of execution of decree in Execution Case No. 2 of 2010. The petitioner has alleged that the forcible possession was taken in collusion with the persons, namely, Nazir, Naib Nazir, Survey Knowing Advocate and the Executive Magistrate taking help of local police during execution of the decree passed in Title Suit No. 260 of 1989.

4. On the basis of such an application filed by the petitioner, the Sub-Divisional Magistrate, Sadar Nawada called for a report from the Executive Magistrate, who gave his report that the boring is in possession of the petitioner and the tube-well is in possession of the opposite parties. On receipt of such a report, the learned Sub-Divisional Magistrate, Nawada Sadar directed the opposite parties not to create hindrance to the petitioner in taking



water from the boring which was taken by the petitioner from before vide order dated 02.04.2013 passed in Case No. 1102 of 2012. The said order was challenged by the opposite party nos.2 to 5 in revision before the learned Sessions Judge, Nawada vide Cr. Revision No. 21 of 2013.

5. After hearing the parties and recording the facts of the case, the learned Sessions Judge in the revision application held that the delivery of possession was made by the order of the civil court of competent jurisdiction. After the execution of the decree in due process of law, the opposite parties came in peaceful possession over the land which was decreed in their favour. The learned Sessions Judge has held that according to Order XXI Rule 97 read with Rule 101 of the Code of Civil Procedure, questions including those relating to right, title and interest of the properties arising between the parties are to be determined by the executing court in the matter of taking over the possession on the basis of a decree passed by the court. He has held that in a proceeding initiated under the Cr.P.C. the Executive Magistrate cannot have any power to render any police assistance which would have an overriding effect over the order passed by the civil court. He has held that if the petitioner had any objection in respect of illegal execution of the decree, he ought to have filed an application before the executing court, which would have enquired into the allegations and passed appropriate orders instead of



approaching the court of the Sub-Divisional Magistrate.

6. Having heard learned counsel for the parties and perused the record including the order passed by the Sub-Divisional Magistrate, I am of the considered opinion that the order passed by the revisional court does not suffer from any illegality. Apart from the reasons assigned in the revisional order, I also find that the learned Sub-Divisional Magistrate while passing the order dated 02.04.2013 in exercise of power under Section 147 of the Cr.P.C. has not recorded his satisfaction regarding any apprehension of breach of peace between the parties regarding any alleged right of user on the land or water. In absence of such finding, I am of the opinion that the learned Sub-Divisional Magistrate could not have exercised his jurisdiction under Section 147 of the Cr.P.C.

7. In that view of the matter, I see no reason to interfere with the order passed by the revisional court. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19-04-2017
Transmission Date	19-04-2017

