

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32398 of 2013

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

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Mishri Lal Sardar, Son Of Late Harkhi Sardar, R/O Village-Barahkurwa, Tola-Chatgaon, P.S.-Triveniganj, Distt-Supaul

.... Petitioner

Versus

1. The State Of Bihar
2. Yugal Mehta, Son of Janak Mehta, R/O Barahkurwa Tola, Chatgaon, P.S.-Triveniganj, District-Supaul

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Sunil Kumar Singh, Advocate
For the Respondent	:	Mr. Vijay Bardhan Pandey, Advocate
		Mr. Pranav Kumar, Advocate
For the State	:	Mr. Nawal Kishore Pd.(APP)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 09-01-2017

The petitioner is aggrieved vide order dated 30.08.2012 passed by learned Executive Magistrate, Triveniganj, Supaul in a proceeding under Section 145 of Cr.P.C by which he had declared the possession of opposite party no.2 over the land in dispute and restrained the petitioner from going over the land in dispute.

The main grievance of the petitioner is that initially, the proceeding was initiated on 03.03.2000 vide Misc. Case No.77 of 2000. The aforesaid proceeding was dropped vide order dated 21.03.2012. Thereafter, the learned Magistrate again initiated the proceeding vide order dated 01.06.2012 without issuing notice to the



members of 2nd party. The learned Magistrate has thereafter proceeded in the proceeding and after recording the evidence of members of first party passed impugned order declaring the possession of members of first party.

The petitioner has enclosed the entire order sheet of Misc. Case No.77 of 2000 which has been marked as Annexure-2.

From perusal of the aforesaid order sheet (Annexure-2) it appears that during the proceeding, no notice was even issued and served on the members of 2nd party. From perusal of the entire order sheet as Annexure-2, it appears that the learned Magistrate has committed illegality in passing the impugned order without making valid compliance of Section 145 (4) Cr.P.C. It further appears that revision filed by the petitioner was dismissed by the learned District Judge on technical ground of time barred although the petitioner has filed a limitation petition.

In view of nature of dispute, this court is of the view that learned Sessions Judge was not justified in dismissing the revision merely on the ground of limitation. Accordingly both the order dated 30.08.2012 passed by learned Executive Magistrate, Triveniganj as well as order of Sessions Judge, Saharsa dated 17.06.2013 are illegal and are hereby set aside. Learned executive Magistrate is directed to pass fresh order in accordance with law



within a period of 6 months from the date of receipt of this order after issuing notice to the members of 2nd party (petitioner) and making proper compliance of the provision of section 145 (4) Cr.P.C..

With the aforesaid direction this criminal miscellaneous application is allowed.

(Sanjay Priya, J.)

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