

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.340 of 2016

Arising Out of PS. Case No.- Year- Thana- District- Aurangabad

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Vijay Tiwary Son of Late Awadhesh Tiwary, resident of village- Neura
Surajmal, P.S.- Risiup, District- Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Aurangabad
3. Sub-Divisional Magistrate, Aurangabad
4. Bindeshwari Tiwary, son of late Loknath Tiwary, resident of village- Neura
Surajmal, P.S.- Risiup, District- Aurangabad

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gajendra Kumar Singh
For the Respondent/s : Mr. ARUN KUMAR(APP)

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

Date : 08-08-2017

Heard learned Counsel for the petitioner and learned
Additional Public Prosecutor representing the State of Bihar.

2. The petitioner is aggrieved by an order, dated
12.01.2016, passed, by the learned Executive Magistrate,
Aurangabad, in Case No. 451 of 2013 (Tr. No. 31 of 2015),
exercising power under Section 147 of the Code of Criminal
Procedure, 1973, and has directed the petitioner to remove the
obstruction caused by him for free movement and use of right of
easement over a passage by Opposite Party No. 4.

3. From the impugned order, I find that there are disputed
question of facts involved on the point of title and possession of



the parties over the land in question. Learned Court below has found that the petitioner has caused obstruction by putting bamboos etc. on the way, which have been directed to be removed.

4. It is the plea of the petition that the land in question belongs to him. It is also his plea that as a matter of fact, the Opposite Party No. 4, who had filed the application before the learned Executive Magistrate, Aurangabad, has, in fact, encroached upon the Gair Mazarua Aam land, pertaining to Khata No. 49, Plot No. 481, which land was being used as *rasta*. The Court below, according to him, has ignored that aspect of the matter and has not decided the question of title of Opposite Party No. 4 over the said land pertaining to plot no. 481.

5. What I notice from the impugned order is that the Court below has made it clear that the said order passed under Section 147 of the Code of Criminal Procedure, 1973, shall be applicable till passing of an appropriate order by competent authority. Though, in the impugned order, it has been mentioned that it shall operate till it is stayed by a court of competent jurisdiction, which, in substance, means that the said order can operate till any order of any other nature is passed by a court of competent jurisdiction. The disputes involved in the present application can be decided in duly framed suit.



6. As has been pointed out by learned Counsel for the petitioner, a partition suit between the parties is pending.

7. The dispute of title and possession with respect to the property in question can be raised if it is not otherwise impermissible under law, in the partition suit.

8. In any event, so far as the title over the land in question is concerned, the same cannot be influenced by any order passed by the Executive Magistrate, including the impugned order.

9. So far as the correctness of the impugned order is concerned, in the facts and circumstances of the case, it does not require interference.

10. This application stands dismissed, but with the observation as above.

11. Interlocutory application filed, if any, by the petitioner, shall also stand disposed of accordingly.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10-08-2017
Transmission Date	10-08-2017

