

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.14283 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SASARAM (ROHTAS)

- =====
1. Harihar Tiwary S/O Late Basudeo Tiwary R/O Village - Kochas, P.S. Kochas, Distt. - Rohtas
 2. Masomat Laalita Devi W/o late Harihar Tiwary
 3. Anil Tiwary
 4. Sunil tiwary
 5. Sushil Tiwary Sons of late Harihar Tiwary All R/o Village Kochas, P.S. Kochas, Distt. Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar
2. The State Of Bihar
3. Radhika Devi W/o late Markandey Tiwary All R/o Village Kochas, P.S. Kochas, Distt. Rohtas.
4. Radhika Devi W/O Late Markandey Tiwary R/O Village - Kochas, P.S. Kochas, Distt. - Rohtas

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rewti Kant Raman

For the Opposite Party/s : Mr. Ram Chandra Sahani (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 09-05-2017

The instant criminal miscellaneous has been filed for quashing the order dated 05.02.2011 passed by Sub Divisional Magistrate, Sasaram in Case No. 8 of 2011 by which he has attached the disputed land under Section 146 (1) Cr.P.C. and appointed Anchal Adhikari, Kochas as receiver of the disputed land.

2. Heard the learned counsel for the petitioners, learned A.P.P. for the State and learned counsel for O.P. No. 2. Perused the lower court record also.



3. On the basis of petition of O.P. No. 2, proceeding under Section 145 Cr.P.C. was initiated with respect to 20 decimal of land of 3 khata and 3 plots asking the parties to file their written statement by 22.01.2011. Thereafter, on 22.01.2011 a petition under Section 146 (1) Cr.P.C. was filed on behalf of the O.P. No. 2, which was heard on 05.02.2011 and the impugned order has been passed.

4. Submission on behalf of petitioners is that with respect to the disputed land, Title Suit No. 177/94 was going on in the court of Munsif, Sasaram which was transferred to the court of Munsif-II and in that court a written statement was filed and later on a fake compromise petition was filed on 25.03.2003 by the plaintiff, Markandey Tiwary, stating therein that the land belongs to the plaintiff and defendant has got no concern with the same.

5. As soon as the petitioner came to know about the said suit, he filed a petition for inspecting the record and, thereafter, a petition was filed stating that earlier he had neither filed any written statement nor any compromise petition, asserting therein that he took permission to file written statement as a fraud has been played upon the court. Rejoinder was filed on behalf of the opposite parties and ultimately petition, filed by the petitioner, was allowed by order dated 14.07.2009 and he was directed to file written statement and ultimately written statement was filed, thereafter, the plaintiff left the



pairbi and ultimately said suit stood dismissed on 16.02.2010. Thereafter, the O.P. No. 2 filed a petition for initiating a proceeding under Section 144 Cr.P.C. and against the initiation order, the petitioner filed Criminal Revision No. 270 of 2010 wherein notice was issued to O.P. No. 2 and after receiving the notice, the O.P. No. 2 filed a petition for initiating the proceeding under Section 145 Cr.P.C., suppressing the fact of dismissal of Title Suit No. 177 of 1994 and pendency of Criminal Revision No. 270 of 2010 and the learned S.D.M. initially ordered to initiate the proceeding under Section 145 Cr.P.C. without making any enquiry or without asking any enquiry report, passed the impugned order.

6. It is submitted that no notice under Section 145 Cr.P.C. was served upon the petitioner, which is evident from the service report itself which is on the record. The notice was received by the O.P. No. 2 herself and the impugned order has been snatched. It is submitted that on restoration Petition Title Suit No. 177 of 1994 has been restored and, as such, when a title suit is going on between the parties a parallel, proceeding under Section 145 Cr.P.C. and attachment order passed under Section 146 (1) Cr.P.C. are not maintainable and are fit to be set aside.

7. The learned counsel for O.P. No. 2, on the other hand, submits that when the impugned order was passed at that time no title



suit was pending as the same was dismissed and after the impugned order, the said title suit has been restored, so there is no illegality in the impugned order. There is bona fide land dispute between the parties and, as such, proceeding under Section 155 Cr.P.C. and attachment order are proper and legal.

8. Having considered the submissions urged at the Bar going through the record and finding that admittedly Title Suit No. 177 of 1994 is going on between the parties, the impugned order has been passed without giving an opportunity of hearing to the petitioner. From perusal of service report of notice under Section 145 Cr.P.C. is manifest that the said notice was received by the O.P. No. 2 herself and not by the petitioner and, as such, it is apparent that the impugned order was passed behind the back of the petitioner without giving an opportunity of hearing. Further no enquiry report was obtained or the learned Magistrate has not made any enquiry himself and without any basis, has passed the impugned order which cannot be sustained in law.

9. The O.P.No.2 has got initiated the proceeding under Sec. 145 Cr.P.C. and got passed the order under Sec.146 (1) Cr.P.C. after suppressing the hard fact regarding title suit and as such the impugned order being illegal, improper and incorrect is hereby quashed. Further there is no need to continue a parallel proceeding under Section 145



Cr.P.C. as between the parties, for the same land, title suit is going on.

10. In the result, the order initiating the proceeding under Section 145 Cr.P.C. vide order dated 10.01.2011 is quashed.

11. In the result, this criminal miscellaneous application is allowed.

(Jitendra Mohan Sharma, J)

sushma/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12-05-2017
Transmission Date	12-05.2017

