

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15377 of 2014

Arising Out of PS.Case No. -125 Year- 2008 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Mahesh Kumar Son Of Late Poshan Lal, Resident Of Village/Mohalla- Salempur
Ward No. 12 Nagarparishad, Ps- Barh, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Executive Magistrate, Barh, Patna
3. Jagdish Prasad Son Of Late Ram Lakhan Sao, Resident Of Mohalla- Salempur
Ward No. 12, Nagarparishad, Ps- Barh, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Khurshid Alam, A.P.P.

For the Opposite Party/s : Mr. Arun Kr. Singh,-5, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

CAV JUDGMENT

Dated: 14-03-2018

Heard learned counsel for the parties.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of an order dated 24.10.2013 passed by the learned Executive Magistrate, Barh (Patna) in Case No. 125 of 2008, whereby the learned court below has allowed the petition under Section 147 Cr.P.C. filed by the opposite party No.3 herein, and appointed the Pleader Commissioner.

The dispute relates to land admeasuring three feet north to south and 45 feet east to west, towards southern portion of Holding



No. 255 situated in old ward No. 11/4 and New Ward No. 12 of Mohalla-Salempur under the Barh Nagar Parishad, P.S.-Barh, Patna. It is alleged that the old double storied house of the applicant is situated adjacent to the disputed land and there is ventilator of 2 feet X 1.5 feet in the southern wall of the old house of the applicant and the opposite party have illegally constructed to some portion towards east adjacent the southern wall of the house of the applicant.

Learned counsel for the petitioner has submitted that after institution of Case No. 125 of 2008, the Sub-Divisional Magistrate proceeded under Section 147 of the Cr.P.C. and during the pendency of the aforesaid proceeding, the first party filed a petition on 12.05.2011 before the court of Executive Magistrate for appointment of Pleader Commissioner and the same was rejected by the Executive Magistrate after hearing both the parties. Subsequently, when the evidence of 2nd party was started, the first party again filed the same petition for appointment of Pleader Commissioner and without giving opportunity to file rejoinder or without hearing the 2nd party, the Executive Magistrate without finding any fresh ground entertained the petition and has allowed the same on 24.10.2013, which is totally absurd and not sustainable in the eye of laws. Therefore, the order dated 24.10.2013 passed by the Executive Magistrate is fit to be quashed.



Having heard learned counsel for the parties and keeping in view the facts and circumstances of the case, there appears no force in the arguments advanced by learned counsel for the petitioner. The order impugned, whereby the court below allowed the application filed under Section 147 of the Cr.P.C. for appointment of Pleader Commissioner, is a revisable order and in view of the fact that the petitioner has an alternative remedy to file a revision against the same, this Court is not inclined to interfere in the matter by exercising its extraordinary jurisdiction under Section 482 Cr.P.C.

This application is, accordingly, dismissed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	NAFR
CAV DATE	13.10.2017
Uploading Date	
Transmission Date	

