

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43984 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- VAISHALI(HAJIPUR)

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Ram Nath Pandey, son of late Tun Bahadur Pandey, resident of village- Bejha,
P.S.- Rajapakar (Baranti), District- Vaishali

.... Petitioner/s

Versus

1. The State of Bihar
2. Ram Nawami Sharma, s/o late Tun Bahadur Pandey, resident of village- Bejha,
P.S.- Rajapakar (Baranti), District- Vaishali

.... Opposite Party/s

with

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Criminal Miscellaneous No. 7038 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- VAISHALI(HAJIPUR)

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Ram Nath Pandey, son of late Tun Bahadur Pandey, resident of village Bejha, P.S.
Rajapakar (Baranti O.P.), Distt. Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar
2. Ram Nawmi Sharma, son of late Tun Bahadur Pandey, residernt of village
Bejha, P.S. Rajapakar (Baranti O.P.), Distt. Vaishali

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.43984 of 2011)

For the Petitioner/s : Mr. Ratan Kumar Sinha, Advocate
For the opposite party No.2 : Mr. Surendra Kishore Thakur, Advocate
Mr. Subodh Kumar, Advocate.
For the State : Mr. Abhay Kumar No. 1, A.P.P.

(In Cr.Misc. No.7038 of 2011)

For the Petitioner/s : Mr. Ratan Kumar Sinha, Advocate
For the opposite party No.2 : Mr. Surendra Kishore Thakur, Advocate
Mr. Subodh Kumar, Advocate.
For the Opposite Party/s : Mr. M.N. Jha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-11-2017

1. These applications under Section 482 of the Code of
Criminal Procedure has been filed for quashing the order dated 14.06.2010



passed by the learned Sub Divisional Magistrate, Hajipur, in Case No. M.1/196 of 2010 by which the learned Magistrate converted the proceeding under Section 144 Cr. P.C. into a Proceeding under Section 145 Cr. P.C. and order dated 21.09.2011 by which the learned Magistrate has issued the order of attachment of the property under Section 146(1) Cr. P.C.

2. Heard learned counsel for the petitioners, learned counsel for the opposite party No. 2 and learned counsel for the State.

3. In the instant case from the record it appears that by order dated 14.06.2010, the proceeding under Section 144 Cr. P.C., initiated between the parties has been converted into proceeding under Section 145 Cr. P.C and in the pending Proceeding under Section 145 Cr. P.C., the learned Magistrate has ordered for attachment of the property in dispute under provision of Section 146(1) Cr. P.C. vide order dated 21.09.2011. The petitioner has filed separate Cr. Misc. challenging the order dated 14.06.2010 vide Cr. Misc. 7038 of 2011. The order dated 21.09.2011 has been challenged in Cr. Misc. No. 43984 of 2011 (instant case). Since both the orders have been passed in the same Proceeding, both are being heard together and are being disposed off by a common order.

4. The brief argument made on behalf of petitioner is that opposite party No. 2 (1st party) in the proceeding under Section 145 Cr. P.C. has earlier filed partition Suit No. 159 of 2003, against this petitioner and others and after proper adjudication, the learned Sub Judge-I, Vaishali at Hajipur, vide order dated 27.09.2006 had dismissed the Partition Suit filed by opposite party No. 2. Thereafter, opposite party No. 2 has filed



First Appeal No. 17 of 2007 in this Hon'ble Court which is still pending. The petitioner has enclosed the Judgment and decree passed in Partition Suit No. 159 of 2003 (Annexure-6) to the supplementary affidavit.

5. Learned counsel for the petitioner has submitted that in such circumstances continuation of proceeding under Section 145 Cr. P.C. is not in accordance with law and it would be multiplicity of the proceeding.

6. The counsel for the opposite party No. 2 has appeared and does not deny the fact that Partition Suit was earlier filed by opposite party No. 2 vide partition Suit No. 159 of 2003 against this petitioner and others which was dismissed on 27.09.2006. Thereafter, First Appeal has been filed by opposite party No. 2 which is pending in this Hon'ble High Court vide First Appeal No. 17 of 2007.

7. It is consistent view of this Court as well as the Hon'ble Supreme Court that where the parties are adjudicating the matter in the civil suit, the continuance of parallel proceeding under Section 145 Cr. P.C. amount to multiplicity of proceeding.

8. It is admitted position that First Appeal No. 17 of 2007 is pending in this Hon'ble Court between the same party with respect to same property, which is subject matter of the proceeding under Section 145 Cr. P.C.

9. In such circumstances, this Court is of the view that continuance of the Proceeding under Section 145 Cr. P.C. will be the abuse of process of Court.



10. Accordingly, the order dated 14.06.2010 passed by the learned Sub Divisional Magistrate, Hajipur, in connection with Case No. M.1/196 of 2010 by which the proceeding under Section 144 Cr. P.C. has been converted into 145 Cr. P.C. and also the subsequent order passed by the learned Sub Divisional Magistrate, Hajipur, by which he has ordered for attachment of property under Section 146 (1) Cr. P.C. are hereby quashed.

11. These two Criminal Miscellaneous applications are accordingly allowed.

12. Since the order of attachment is already quashed, the property will be released from the custody of receiver who was appointed by the order dated 21.09.2011 passed by the learned Sub Divisional Magistrate, Hajipur.

(Sanjay Priya, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	17/11/2017
Transmission Date	17/11/2017

