

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.749 of 2015

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1. Patel Sharma S/o Late Bachcha Sharma Resident of Village Kahua, P.S. Sangrampur, District Munger.

.... Petitioner/s

Versus

1. The State of Bihar, through the D.M. Munger.
2. The District Magistrate, Munger.
3. The Superintendent of Police, Munger.
4. The Sub Divisional Officer Tarapur, District Munger.
5. The Station House Officer, Sangrampur P.S., District Munger.
6. Matuki Mandal S/o Maharaj Mandal
7. Bisundeo Mandal S/o Maharaj Mandal
8. Sushil @ Soso Mandal S/o Bhujangi Mandal
9. Pankaj Mandal S/o Amir Mandal
10. Bittan Mandal S/o Ishwari Mandal Respondent No. 6 to 10 Resident of Village Khaira, P.O. & P.S. Sangrampur, District Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Gopal Mishra, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, GA-9

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

CAV JUDGMENT

Date: 17-03-2017

Heard learned counsel for the petitioner and learned Government Advocate for the State-respondents.

2. The sole petitioner, above named, has invoked the writ jurisdiction of this Court with prayer to issue mandamus against respondent No.4, the Sub-Divisional Officer, Tarapur, Munger, to initiate a proceeding under Section 144 Cr.P.C. on the report dated 18.06.2014 submitted by the Station House Officer, Sangrampur Police Station vide Annexure-5.

3. Prayer is that private respondent Nos.6 to 10 be



restrained from going on the land or creating any sort of disturbance in plantation and harvesting of crops by the petitioner on the referred agricultural land.

Another prayer is for a direction to the State-respondents to depute an Executive Magistrate with police force at the time of harvesting of the crops so as to enable the petitioner to harvest his crops properly and peacefully as on several occasions, in the past, respondent Nos.6 to 10 had attempted to disturb the possession of the petitioner over the referred land.

4. A brief background of the present writ application is that respondent Nos.6 to 9 filed Title Suit No.85 of 2002 against the petitioner and others claiming therein that the suit property is ancestral property of respondent Nos.6 to 9 and they are in physical possession of the same. The petitioner and other defendants in their written statement asserted that in fact the property was purchased by the petitioner and his family members from the ancestor of respondent Nos. 6 to 9 through different registered sale-deeds executed in between 1908 to 1942 and after purchase, the petitioner and others are in possession thereof. Title Suit No.85 of 2002 was dismissed by judgment and decree dated 15.09.2015. The dismissal is under challenge in Title Appeal No. 25 of 2011 pending before the learned District Judge, Munger. In between the filing of civil suit and its disposal at the instance of the petitioner a proceeding



under Section 145 Cr.P.C. was initiated vide Case No.388 of 2005 for the same land and between the same parties. During pendency of the proceeding aforesaid the land was attached in exercise of power under Section 146(1) Cr.P.C. After dismissal of the suit the attachment order was withdrawn on 16.10.2012 vide Annexure-1, stating that since civil suit has already been decided there is no need for further attachment. Thereafter again the same dispute arose and police report dated 18.06.2014 vide Annexure-5 submitted for initiation of a proceeding under Section 144 Cr.P.C.

5. The counter affidavit of the State-respondents reveals in pursuance of the police report at Annexure-5, a proceeding under Section 145 Cr.P.C. has already initiated vide Case No.98 of 2015 and as such according to the State-respondent the main grievance of the petitioner has already been redressed.

6. Respondent Nos.6 to 9 in their separate counter affidavit contended that they are Khatiyani Raiyat of the disputed land and are in actual possession of the same. The petitioner has not taken any step in the civil suit or in the pending appeal for protection of his possession. Even if the claim of the petitioner for possession is assumed to be correct, the criminal proceeding for deciding possession time and again would be an abuse of the process of the court.

7. There is no dispute that the petitioner had not taken



any step for redressal of his grievance in the civil suit though there is provision for issuance of ad interim injunction and appointment of receiver. The petitioner has not taken any step for execution of the decree of dismissal of the suit.

8. The aforesaid factual position raises the question whether this Court in exercise of extraordinary power of judicial review should grant any relief, as prayed for.

9. On submission of the State-respondents that a proceeding under Section 145 Cr.P.C. has already been initiated, the petitioner half heartedly contended that instead of 145 proceeding a proceeding under Section 144 Cr.P.C. should have been initiated against private respondent Nos.6 to 9. I fail to understand that if there is apprehension of breach of peace for possession of land, how the learned Sub-Divisional Magistrate would decide the issue in a short proceeding under Section 144 Cr.P.C. without mandatory inquiry under Section 145 Cr.P.C. and without taking evidence from both the sides in support of their case and claim. Moreover, while exercising the writ jurisdiction, this Court cannot enter into the disputed question of fact nor can enter into the arena of appreciation of material available on the record, for coming to the conclusion that what appropriate proceeding, whether under Section 144 or 145 Cr.P.C., was appropriate in the facts and circumstances of this case. Since the power of the learned Executive Magistrate under Section



144/145 is discretionary one, this Court cannot enter into the examination of its correctness unless it would apparently be evident that the authority concerned has failed to exercise the jurisdiction vested in it or has wrongly exercised the jurisdiction or the impugned order suffers from the error of record. The aforesaid infirmity is not available in the present case.

10. The direction to depute the Executive Magistrate and police force cannot be issued in the facts and circumstances of the case especially in view of the fact that the judgment and decree of the civil suit is under challenge in the pending appeal. Moreover, for execution of the decree and redressal of other grievances relating to the disputed property is available in the pending civil proceeding. Therefore, this relief cannot be granted in favour of the petitioners.

11. In the result, this writ application is dismissed as devoid of any merit.

(Birendra Kumar, J)

Mkr./-

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