

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41897 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- SAMASTIPUR

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Jagdish Sharma, Son of Late Jay Kishun Sharma, Resident of Village- Dharampur, Anchal Jitwarpur, P.S. Samastipur Mufassil, District- Samastipur.

.... Petitioner

Versus

1. The State of Bihar.
2. Rajendra Das, son of Late Murat Das.
3. Hansh Kumar, son of Rajendra Das.
Both resident of Village- Dharampur, Anchal- Jitwarpur, P.S.- Samastipur Mufassil, District- Samastipur.
4. Vijay Kumar Paswan, son of Late Anand Bihari Paswan, resident of Village- Jagdishpur, P.S.- Samastipur Mufassil, District- Samastipur.

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Mritunjay Prasad Singh, Advocate
	:	Mr. Ramparwesh Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 01-09-2017

Section 147 of the Code of Criminal Procedure (for short 'Cr.P.C.') is an amplification of Section 145 of the Cr.P.C. The procedure at the inquiry is the same as that provided under Section 145 of the Cr.P.C. If the inquiry shows that the right exists, the Magistrate has discretion to make an order prohibiting any interference with the exercise of the right, including removal of any obstruction to such user. If it appears that the right does not exist, an order may be passed prohibiting exercise of the right. In any case, the order passed under Section 147 of the Cr.P.C. remains operative till a decision of a civil court is obtained. Further, Section 147 of the Cr.P.C. can be invoked only if the right is exercised within three



months of the receipt of the information or police report in cases of rights exercisable at all times of the year, or is exercised at the last particular occasion or season of periodically referring rights.

2. In the present case, the Executive Magistrate has given a categorical finding that no such right exist in favour of the petitioner in respect of user or land in question. He has also given a finding that such right was not exercised within three months of receipt of information. In inquiry, also it was found that the petitioner had no such right of user in past. On these findings, if the Executive Magistrate rejected the petition of the petitioner, I see no illegality in the revisional order passed by the learned Session Judge, Samastipur on 17.06.2016 in Criminal Revision No.370 of 2015 whereby the revision petition preferred against the order dated 16.04.2015 passed by the learned Sub-Divisional Magistrate, Samastipur in M. R. Case No. 619 of 2007, has been dismissed.

3. In that view of the matter, the application, being meritless, is dismissed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
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